PROCEEDINGS

OF THE

TRAVANCORE

SRI MULAM ASSEMBLY

Vol. XIII

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Index

to the

Proceedings of

THE TRAVANCORE SRI MULAM ASSEMBLY.

Volume XIII.

9th February 1939 to 26th June 1939

27th Makaram 1114 to 12th Mithunam 1114

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PROCEEDINGS
of
THE TRAVANCORE SRI MULAM ASSEMBLY.

SECOND ASSEMBLY.

FOURTH SESSION, 1939/1114

(*OFFICIAL REPORT.*)

Thursday, 9th February 1939/27th Makaram 1114.

The Assembly met in the Legislative Chamber at eleven of the clock with Sachivottama Sir C. P. Ramaswami Aiyar, K. C. I. E., the Dewan-President, in the Chair.

NEW MEMBERS.

The following new members took the oath and signed the rolls :

1 Mr. C. P. Gopala Panicker,
2. ,, M. Govinda Pillai,
3. ,, M. P. Joseph,
4. ,, Puthupalli S. Krishna Pillai,
5. ,, Narayanan Unnithan,
6. ,, M. K. Nilakanta Aiyar,
7. ,, K. P. P. Menon,
8 ,, P. Parameswaran Pillai,
9. ,, Vaidyasastrakusala Mrs. M. Poonen Lukose,
10. ,, Mr. Ramachandra Rao, and
11. ,, Mr. G. B. E. Truscott.

QUESTIONS AND ANSWERS.

Assignment of lands to non-Travancoreans in 1112 *and* 1113.

1 * MR. K. P. KOCHJKORA THARAKAN (*Kunnatnad* cum *Parur*): Will the Government be pleased to lay on the table a statement showing :

(*a*) whether lands in Travancore have been assigned to any non-Travancoreans during the years 1112 and 1113;

(*b*) if so, their total extent ;

(*c*) to whom the assignments were made ;

(*d*) the receipts under that item to the Government ;

(*e*) whether there is any amount still to be recovered ;

(*f*) if so, from whom ;

(*g*) the amount to be realised ;

(*h*) the *tharavila* imposed per acre of land assigned ;

(*i*) whether land has been given in auction to foreigners ; and

(*j*) if so, the particulars mentioned in (*b*) to (*h*) *supra* for lands given in auction ?

G. P. T. 1527—350.

MR. M. RAMACHANDRA RAO (*Land Revenue and Income Tax Commissioner*): (*a*) Yes.

(*b*) 5121 acres and 82·577 cents.

(*c*) and (*h*) A *statement is laid on the table.

(*d*) Rs. 2,32,921-8-3.

(*e*) Yes.

(*f*) Mr. J. R. Vincent, Planter, Nenmani Estate, Mundakayam.

(*g*) Rs 22,060-3-5 (to be realised in 9 annual instalments at Rs. 2,451-3-8 per annum).

(*i*) No.

(*j*) This does not arise in view of answer to part (*i*).

Evening Dispensary at Kuruppumpadi.

2. ***MR. K. P. KOCHUKORA THARAKAN** : Will the Government be pleased to state:

(*a*) whether an evening dispensary was being conducted by Government at Kuruppumpadi;

(*b*) if so, how long it was conducted;

(*c*) whether during a discussion in the Legislature on the abolition of the said evening dispensary, the then Darbar Physician has stated on behalf of Government in 1106 or 1107 that grant-in-aid dispensaries would be started immediately and that the establishment of a grant-in-aid dispensary at Kuruppumpadi would be specially considered;

(*d*) whether they are aware of any qualified person conducting a dispensary at Kuruppumpadi; and

(*e*) whether any one has applied for grant-in-aid, and if so, who that person is and the action taken by them on the matter?

VAIDYASASTRAKUSALA DR. (MRS.) M. POONEN LUKOSE (*Surgeon General*): (*a*) Yes.

(*b*) From 1st Meenam 1103 to 15th Kumbhom 1105.

(*c*) No. The question of the opening of dispensaries under the Rural Medical Relief Scheme was one of the subjects discussed then.

(*d*) Yes.

(*e*) Yes; Mr. K. M. Chacko L. M. P. The matter is pending inspection of the institution by the Surgeon General.

Conversion of Kottah and Marakal into Para.

3. ***MR. K. NARAYANAPERUMAL NADAR** (*Tovala* cum *Agastisvaram*); Will the Government be pleased to state:

(*a*) whether they had appointed a Special Officer to find out the mistake in converting the *kottah* and *marakal* into *paras*; and

(*b*) if the answer to part (*a*) is in the affirmative, whether he had submitted a report to the Government?

MR. M. RAMACHANDRA RAO: (*a*) A special Officer was appointed by Government for enquiring into the claims of the Nanjanad ryots in the matter of conversion of the *kottah* into *para* measure.

(*b*) Yes.

MR. K. NARAYANAPERUMAL NADAR: May I know the date on which the Special Officer was appointed?

MR. M. RAMACHANDRA RAO: About two months back.

**Vide* Appendix

MR. K. NARAYANAPERUMAL NADAR : May I know the date on which the Special Officer submitted his report ?

MR. M. RAMACHANDRA RAO About a week back.

MR. K. NARAYANAPERUMAL NADAR : May I know why the report has not been published yet ?

MR. M. RAMACHANDRA RAO : It has just been submitted to Government.

MR. K. NARAYANAPERUMAL NADAR : Do the Government intend publishing it ?

PRESIDENT : Hon'ble member cannot ask questions about the intention of Government.

MR. K. NARAYANAPERUMAL NADAR : May I ask whether representations have been received from the people of Nanjinad that Government should publish the report of this Special Officer as early as possible ?

MR. M. RAMACHANDRA RAO : I do not remember having seen any such representation,

MR. M. SIVATHANU PILLAI : Have the Government taken any action on the report ?

MR. M. RAMACHANDRA RAO : Not yet.

Remission Rules.

4. * **MR. C. JEBAMONY NADAR** (*Kalkulam cum Vilavankod*) : Will the Government be pleased to state whether *tarisu* remission rules apply to the taluks of Kalkulam, Agastisvaram and Vilavankod ?

MR. M. RAMACHANDRA RAO : The member is referred to Schedule II of the Remission Rules published at page 464 of the 2nd Supplement to the Land Revenue Manual Vol. II.

MR. K. NARAYANAPERUMAL NADAR : May I ask why the Tharisu remission rules do not apply to the Puduval Tarisu lands commanded by the Kodayar Project ?

MR. M. RAMACHANDRA RAO : At the time the rules were framed, it was thought that only the pakuthies of the Tovala and Agastisvaram taluks, the pakuthies which were notified in the Government notification, deserved, and that the other pakuthies did not deserve the concession granted by the rules.

MR. K. NARAYANAPERUMAL NADAR · I want the reason for that conclusion.

MR. M. RAMACHANDRA RAO : The reason is that the other pakuthies were not considered deserving of that relief.

MR. K. NARAYANAPERUMAL NADAR : Have there been representations in the old Popular Assembly and the Legislative Council that the tarisu remission rules were defective in regard to puduval tarisu lands ?

MR. M. RAMACHANDRA RAO : There were, the Government thought that these rules would serve the purpose

MR. K. NARAYANAPERUMAL NADAR : May I ask whether the remission granted in 1111 for puduval lands was granted as a matter of special concession ?

MR. M. RAMACHANDRA RAO : Yes.

MR. T. C. KESAVA PILLAI : കൽക്കുളം വിളവംകോട്ട ഈ താലൂക്കുകളിൽ തരിശായി കിടക്കുന്ന ഭൂമികൾക്ക് കരം ഇളവുചെയ്തുകൊടുത്തിട്ടുണ്ടോ?

MR. M. RAMACHANDRA RAO : As a matter of special concession, remission was granted in some parts, in 1111.

MR. T. C. KESAVA PILLAI. ആയക്കെട്ടു നിലങ്ങൾ കഴിഞ്ഞ രണ്ടു മൂന്നു കൊല്ലങ്ങളായി കൃഷിയിറക്കാതെ തരിശായിട്ടു കിടക്കുകയാണെന്നു അറിയാമോ?

MR. M. RAMACHANDRA RAO Concerning the last two years, I have no information on the point.

MR. T. C. KESAVA PILLAI : ഇങ്ങനെ തരിശുകിടക്കുന്ന വസ്തുക്കളുടെ ലിസ്റ്റ് എടുത്തു നോക്കിയിട്ടുണ്ടോ?

MR. M. RAMACHANDRA RAO ; No, please

MR. T. C. KESAVA PILLAI : കൽക്കുളം വിളവംകോട്ട് ഈ താലൂക്കുകളിൽ ഭൂമി കൃഷിചെയ്യാതെ തരിശായി കിടക്കുകയാണെന്നും അങ്ങനെയുള്ള ഭൂമികൾക്ക് കരം ഇളവുചെയ്തു കിട്ടണമെന്നും കാണിച്ച് വ്യക്തിപരമായും കൂട്ടായും ഗവണ്മെന്റിന് അപേക്ഷകൾ കിട്ടിയിട്ടുണ്ടോ?

MR. M RAMACHANDRA RAO : I have no information.

MR. T. C. KESAVA PILLAI കരം സംബന്ധിച്ചതായ കടലാസുകൾ എല്ലാം ലാൻഡ റവന്യൂ കമ്മീഷണരാഫീസിൽ വരാറില്ലേ?

MR. M. RAMACHANDRA RAO . Certainly.

MR. T. C. KESAVA PILLAI : ഇപ്രകാരമുള്ള കടലാസുകൾ ലാൻഡ റവന്യൂ കമ്മീഷണർക്ക് കിട്ടുമ്പോൾ പൊതുജനക്ഷേമത്തെ മുൻനിറുത്തി അവർക്കു വേണ്ട ആനുകൂല്യങ്ങൾ ചെയ്തുകൊടുക്കുന്നതിന് ഗവണ്മെന്റിനോട് ശുപാർശ ചെയ്യുവാൻ ദയവുണ്ടാകുമോ?

MR. M. RAMACHANDRA RAO Certainly.

MR. T. C. KESAVA PILLAI : കരം ഇളവുചെയ്തുകിട്ടണമെന്നുള്ള അപേക്ഷകൾ വന്നിട്ടുണ്ടെങ്കിൽ ൧൧൧൪ കന്നിപ്പൂവിലെയും കുംഭപ്പൂവിലെയും കരം ഇളവുചെയ്തുകൊടുക്കാൻ ഗവണ്മെന്റിന് ദയവുണ്ടാകുമോ?

MR. M. RAMACHANDRA RAO : Certainly.

MR. M. SIVATHANU PILLAI : May I know whether, in respect of Nanjanad, there have been representations regarding the lands lying fallow within the commanded area ?

MR. M. RAMACHANDRA RAO: There has been one or two representations during the last two years ; and I have asked the Peishkars to make the necessary enquiries.

MR. M. SIVATNANU PILLAI: Is the member aware of any representation to Government in respect of this matter?

MR. M. RAMACHANDRA RAO; So far as I remember, I have not received any representation forwarded to me by the Government.

MR. M. SIVATHANU PILLAI; Is the member aware that, in Nanjanad, during the last Kanni crop, over 2500 acres of ayacut lands were lying fallow?

MR. M. RAMACHAHDRA RAO: I know some ayacut lands were left fallow; but I am not sure whether the extent of such land would be 2500 acres.

MR. M. SIVATHANU PILLAI: Is the member aware that, with respect to Kanni kist due even on such land, his subordinates are taking coercive steps?

MR. M. RAMACHANDRA RAO: I have received some petitions alleging that.

MR. M. SIVATHANU PILLAI: Do the Government propose to withhold coercive steps in respect of such lands?

MR. M. RAMACHANDRA RAO - Not until definite reports from the officers of the department are available as to particular lands.

MR. M. SIVATHANU PILLAI: Is it the opinion of Government that land-holders will be in a position to pay kist on land which has been lying fallow?

MR. M. RAMACHANDRA RAO I can assure the member that even if tax is paid, it will be refunded wherever it is found to work hardship.

MR. M. SIVATHANU PILLAI: May I request the honourable member to suggest any means by which the landholders can pay kist for a period when the lands have been lying fallow?

MR. M. RAMACHANDRA RAO: They can pay from their savings of the previous crop.

MR. M SIVATHANU PILLAI: Is the member in a position to say that the people of Nanjanad are in a position to put by money after meeting cultivation expenses and their own necessities, and after paying kist?

MR. M RAMACHANDRA RAO: I shall not answer that question

MR. M. SIVATHANU PILLAI: Do the Government propose to call for figures in respect of lands within the commanded area, which have been lying fallow?

MR. M. RAMACHANDRA RAO: The Peishkars have been asked to report on the matter.

MR. M. SIVATHANU PILLAI; Have not the Tahsildars already collected certain figures?

MR. M. RAMACHANDRA RAO: At any rate they have not submitted those figures to me.

MR. M. SIVATHANU PILLAI: Will the Land Revenue Commissioner be pleased to call for the figures?

MR. M RAMACHANDRA RAO: I have already stated that I have called for the figures.

MR. D. FRANCIS: புதுவல் நிலங்களுக்குக் கிருஷிக்கு ஜலங்கொடுக்காமலிருந்தாலும் கரம் வாங்க வேண்டுமென்ற சட்டம் உண்டா?

MR. M, RAMACHANDRARAO: தரிசாயுள்ள புதுவல் நிலங்களுக்குக் கரம் வாங்கவேண்டுமென்பது சட்டம்,

Appendix.

***Vide* Answer to question No. 1 [9]**

Statement referred to in the draft replies to parts (*c*) and (*h*) of interpellation about assignment of lands to non-Travancoreans in 1112 and 1113.

Serial No.	Name of the Assignee	Rate of tharavila per acre.	Remarks.
1	The Atchancoil Tea and Rubber Co.	Bh. Rs. 100 per acre	
2	J. R. Vincent, Nenmani, Estate, Mundakayam	Rs. 30 per acre for an area of 183·63 acres and Rs. 50 per acre for the remaining area	
	Messrs. E. D. Sassoon & Co.,Ltd.	Rs. 400 to 600 per acre	
4	Mathen Ouseph of Madaseri, Cochin State	,, 500 ,,	
5	Vareed Devasia, Cochin State	Do.	
6	Paili Cheeku, Do.	Do	
7	Aiyappan Pappen Do.	,, 250 ,,	
8	Govindan Raman Do.	,, 2000 ,,	
9	David Nadar	Bh. Rs. 100 per acre	
10	Chuppu Thevan	Do.	
11	Sankara Kudumban	Do.	
12	Kasiviswanathan Chetty	Do.	
13	Sivaswamy Chetty & Others	Do.	
14	Do. Do.	Do.	
15	Perumal Kudumban	Do.	
16	Ananthakrishna Pillai	Do.	
17	A. A. D. T. T. Co., Ltd.	,, 60 ,,	Tharavila &c. received before. Only registry effected in 1112
18	Do. Do.	,, 100 ,,	
19	Tagore Singh	Do.	
20	A. A. D. T. T. Co., Ltd.	,, 125 ,,	
21	Chinna Alagiri Chetty	,, 100 ,	
22	Ananthakrishna Pillai	Do.	
23	Sankara Kudumban	Do.	
24	Kamakshi Shanmughom Chetty	Do.	
25	J. T. Manickavasagom	Do.	

Appendix—(*contd.*)

Serial No.	Name of the Assignee.	Rate of tharavila per acre.	Remarks.
26	C. Kamatchi Pillai	Do.	
27	Vaghamon Tea Co., Ltd,	,, 85 ,,	
28	A. S. Chidambaram Pillai	Do.	
29	Malayalam Plantations Ltd.	,, 70 & 85 ,,	
30	Do. Do.	,, 25 ,,	
31	Kali Muthu Pillai	,, 100 ,,	
32	N. K. T. Chamandi Pillai	Do.	
33	Sankara Pillai and others	Do.	
34	Vasu Chetty	Do.	
35	Athua Suppaya Pillai	Do.	
36	Ponnammal *alias* Gnanammal	Do.	
37	Churuliandy Chetty	,, 125 ,,	
38	Kamalavathy Jaichand	,, 100 ,,	
39	Gnanaratnammal	,, 125 ,,	
40	S. M. Palaniandy Pillai	,, 100 ,,	
41	N. K. T. Muthukrishna Pillai	Do.	
42	T. K. Churuliandy Gounder	Do.	
43	Bhagavathy Raju Gounder	Do.	
44	Suppuswamy Gounder	Do.	
45	Travancore Tea Estates Co., Ltd.	,, 35 & 85 ,,	
46	Southern India Tea Estates Co., Ltd.	,, 85 ,,	

ADJOURNMENT MOTIONS.

PRESIDENT : I have received notices of various adjournment motions. The first one is by Mr. N. Narayana Kurup, and runs thus :

> "I beg leave to move that the business of this House be adjourned for the purpose of discussing a definite matter of urgent public importance, namely, the public unrest, and discontent in so far as they feel that a large section of them are virtually disenfranchised, by the sudden and recent notification of the Government declaring vacant, the seats of nineteen members of the two Houses of Legislature, and deciding to legislate without their representatives."

MR. PUTHUPALLY S. KRISHNA PILLAI : I object, Sir. Under rule 21 (5), no adjournment motion can be moved on a matter on which a resolution cannot be moved; and, under rule 56 (a) no resolution can be moved which is in contravention of any of the various sub-clauses mentioned therein one of such sub-clauses relates to 'any matter removed from the cognisance of the House under Section 17 of the Regulation'. Section 17 (1) (d) provides that any matter covered by the provisions of the Legislative Reforms Regulation or rules framed thereunder cannot be discussed on the floor of the House.

The subject matter of the present adjournment motion comes directly under rules 5 and 25 of the rules passed under the Legislative Reforms Regulation. I may also add that rule 25 is mandatory.

PRESIDENT : I see your point. Has Mr. Narayana Kurup anything to say on the matter.

MR. N. NARAYANA KURUP : (*Ambalapuzha* cum *Shertallai*) Sir, I perfectly agree with the Hon'ble the Legal Remembrancer, in holding that no resolution can be moved on the subject matter of this adjournment motion. Even though, by straining the Section, a subsequent disqualification might afford legal justification to declare the seats vacant, it could not be justified on moral and constitutional grounds.

But what I want to bring to the notice of this House is that even conceding that the Government could not be expected to be very soft in favour of the opposition, which was by no means tame, and which had the temerity to speak what they felt without fear or frown from others, why should the constituencies be penalised for the sins of omision or commission, immaginary or real, of some members at a time when several bills concerning them also are on the anvil. These rules were in force even on the 10th of Chingom and on the subsequent days when those members were convicted for more than 6 months. The Government could have declared the seats vacant then, and ordered an immediate election so that representatives could have been returned before this Session, instead of declaring the seats vacant a few days before the Session.

PRESIDENT : Order, order. As there has apparently been a misconception regarding this matter, before I give my ruling, I shal

indicate my reasons. Under the Electoral Rules, Rule 5 (2) "a person against whom a conviction by a criminal court involving a sentence of imprisonment for a period of six months or more is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for re-election for five years from the date of expiration of the sentence:

"Provided that on *application* by a person disqualified under this sub-rule the Government may remove the disqualification by order in this behalf." Under Rule 25 of the same rules it has been made clear that this provision is equally applicable to initial and later disqualifications. Rule 25 says—

> "If any person, having been elected or nominated subsequently becomes, subject to any of the disabilities stated in clauses (d) (e), (f) and (g), or sub-rule (1) or in sub-rules (2), (3) and (4) of rule 5 or of rule 21 as the case may be, or fails to take the oath or affirmation x x x x x x, the Government shall, if the disqualification has not been removed under these rules by notification in the Gazette, declare his seat to be vacant."

Analysing the rules, what do we find? We see that the Government are under a positive duty to declare the seats vacant except in one of two contingencies. The first contingency is a pardon which may be granted by His Highness under the high prerogative vested in him as the Sovereign of this country. That pardon cannot and, naturally, will not be extended normally unless people ask for pardon, because it is impossible to conceive that His Highness will be going about asking people whether they desire to be pardoned.

The second point is with regard to the disqualification. The rule is perfectly clear that *on application* by a person disqualified under this sub-rule the Government may remove the disqualification. There would have been reason for complaint if a single person had applied to the Government for the disqualification to be removed and the disqualification had not been removed. Not one of these gentlemen, so far as I am aware, has ever applied for the removal of the disqualification. The Government might have, taking advantage of their conviction, immediately declared their seats vacant. If that had been done, then that procedure would have been open to the objection that it was a vindictive procedure on the part of Government. Time was therefore given until three or four days before the date indicated for the convening of the Legislature so that they might make up their minds either to apply to His Highness for pardon or to the Government for the removal of their disqualification. Neither step having been taken, the Government were under a positive and imperative obligation to declare their seats vacant. Under these circumstances, I hold that Government, having acted under a statutory duty, had no further discretion or alternative in the matter. No resolution is permissible; and therefore no adjournment motion is possible. The adjournment motion is out of order and is ruled out.

[President]

The next adjournment motion given by the same honourable member is this—

"I beg leave to move that the business of this House be adjourned for the purpose of discussing a definite matter of urgent public importance, namely, the deep sense of public dissatisfaction at suppressing the legitimate and elementary right of association of young people of schools and colleges into a federation by the ban imposed on them by the educational authorities, and the arrest and imprisonment of the President and Secretary of the Students' Federation".

I hold that the motion is in order. I wish to know whether the member has the leave of the House to move the adjournment motion. As no objection has been raised, the motion will be moved this afternoon at 3-30.

The next motion for adjournment is by Mr. Narayana perumal Nadar It runs—

"I intend asking for leave to discuss the situation created recently among the people of Travancore by the repressive policy adopted by the Travancore Government to suppress the activities of the State Congress."

MR. PUTHUPALLY S. KRISHNA PILLAI; I object.

PRESIDENT: Objection having been taken, I would like those people, who are in favour of leave being granted, to rise in their seats.

Mr. Narayanaperumal Nadar alone stood up.

PRESIDENT: One member alone having risen in his seat, and as, under the Rules, 14 members should rise in their seats in order to allow an adjournment motion to be discussed in the House, the adjournment motion cannot be discussed. Hence it is ruled out.

The next motion for adjournment is by Mr. Sivathanu Pillai:—

"In Nanjinad, during the last Kanni crop of 1114 there were thousands of acres laying fallow, for which taxes for Kanni are being collected, on the ground that fallow remissions are not contemplated. This has created great hardship and is causing great loss and suffering to the already suffering ryots of Nanjinad. Thus the situation created deserves the serious notice of the House as also of the Government".

Does anybody object? As nobody objects, this motion will be discussed tomorrow afternoon at 3-30.

The next adjournment motion, by Mr. T. C. Kesava Pillai is--

"I beg to move the adjournment of the business of the House to discuss a definite matter of urgent public importance, viz., the situation created among the people of the Kalkulam and Vilavankod taluks regarding the scarcity of water for drinking and agricultural purposes".

Does anybody object? As nobody objects, this adjournment motion will be taken up for discussion the next day at 3-30 p. m.

MESSAGES FROM THE SRI CHITRA STATE COUNCIL.

The Secretary to the Sri Mulam Assembly then read the following messages from the Secretary to the Sri Chitra State Council:—

"Under rule 42 of the Travancore Legislative Rules, passed under date the 28th October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting held on the 19th August 1938 agreed, without any amendments, to the Travancore Public Accounts Regulation (Amendment) Bill which was passed by the Sri Mulam Assembly at its meeting held on the 13th July 1938. A copy of the Bill, as passed by the Council, is enclosed."

"Under Rule 42 of the Travancore Legislative Rules, passed under date the 28 October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting held on the 19th August 1938 agreed, without any amendments, to the Travancore Criminal Law (Amendment) Bill which was passed by the Sri Mulam Assembly at its meeting held on the 18th July 1938. A copy of the Bill, as passed by the Council is enclosed".

"Under Rule 42 of the Travancore Legislative Rules, passed under date the 28th October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting held on the 19th August 1938 agreed, without any amendments, to the Travancore Abkari Regulation (Amendment) Bill which was passed by the Sri Mulam Assembly at its meeting held on the 18th July 1936. A copy of the Bill, passed by the Council, is enclosed".

"Under Rule 42 of the Travancore Legislative Rules, passed under date the 28th October 1932, I am directed to imform that the Sri Chitra State Council has, at its meetings held on the 19th August 1938 agreed without any amendments, to the Travancore Irrigation Regulation (Amendment) Bill which was passed by the Sri Mulam Assembly at its meeting held on the 18th July 1938. A copy of the Bill, as passed by the Council, is enclosed".

" Under Rule 42 of the Travancore Legislative Rules, passed under date the 28th October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting held on the 19th August 1938 agreed, without any amendments, to the Travancore Trade Disputes Bill which was passed by the Sri Mulam Assembly at its meeting held on the 24th November 1937. A copy of the Bill, as passed by the Council, is enclosed".

"Under Rule 42 of the Travancore Legislative Rules passed under date the 28th October 1938, I am directed to inform you that the Sri

Chitra State Council has, at its meeting held on the 19th August 1938 agreed, without any amendments, to the Travancore Factories Bill which was passed by the Sri Mulam Assembly at its meeting held on the 18th July 1938. A copy of the bill, as passed by the Council, is enclosed".

"Under Rule 42 of the Travancore Legislative Rules passed under date the 28th October 1938, I am directed to inform you that the Sir Chitra State Council has, at its meeting held on the 19th August 1938 agreed, without any amendments, to the Travancore Companies' Bill which was passed by the Sri Mulam Assembly at its meeting held on the 15th July 1938. A copy of the bill, as passed by the Council, is enclosed".

REGULATIONS ASSENTED TO BY HIS HIGHNESS THE MAHARAJA.

1. The Travancore Public Accounts Regulation Amendment Bill.
2. The Travancore Criminal Law Amendment Bill.
3. The Travancore Hindu Widows Remarriage Bill.
4. The Travancore Trade Disputes Bill.
5. The Travancore Abkari Regulation Amendment Bill.
6. The Travancore Irrigation Regulation Amendment Bill.
7. The Travancore Factories Bill.
8. The Travancore Companies Bill.

STATEMENT LAID ON THE TABLE.

MR. M. GOVINDA PILLAI (*Financial Secretary*): Under Rule 76 of the Travancore Legislative Rules, I beg to lay on the table the following statement of expenditure authorised by the Government under Section 32 of Regulation II of 1108.

Demand.	Amount in Rupees.	Particulars.
1113.		
I. Land Revenue.	3,940	For the settlement of claims in respect of Shendruney Valley Coffee Estates.
VI. Administration of Justice.	1,000	To meet the additional charges under, 6 E.—Administration of Justice—Law Officers—Other Law charges.
VII. P. W. D. including Capital Expenditure not charged to Revenue.	9,741	For the investigation of the construction of small storage reservoirs in South Travancore.
Do.	50,000	For the Transport Department, for works by the P. W. D. and the Electrical Departments.
X. Medical.	25,000	To meet the additional expenditure under 25 B—Medical—Dieting charges.
Do.	1,950	For the payment of passage money to Dr. James Simpson.
XI. Public Health and Sanitation.	21,500	To meet the additional expenditure under 25 G—Medical—Prevention of Epidemics.
XIII. General Administration excluding Financial Secretariat, Account Office, Legislative Bodies and Public Service Commissioner.	2,000	To meet the contingent expenditure of the Secretariat.

Demand.		Amount in Rupees.	Particulars.
	1113.		
XVIII.	Industries including Clay Refining and Porcelain Factory.	500	To meet the additional expenditure under Sales Depot, Bombay.
	Do.	19,009	For expenditure in connection with the construction of permanent buildings for the Ceramic works at Kundara.
XXVIII.	Scientific and Miscellaneous Departments.	1,930	For Payment of T. A. to the members of the Economic Development Board.
	Do.	500	To meet the expenditure on account of the pay of the menial staff in the Sri Chitralayam.
XXVII.	Stationery and Printing.	6,700	To meet the additional expenditure under Government Press—Piece Work establishment etc.
	1114.		
IV.	P. W. D. including expenditure not charged to Revenue.	950	For urgent works to be carried out in the Pallipuram Fort.
	Do.	5,000	For re-metalling the road from the East Fort Gate to Thiruvallam.
	Do.	10,100	For widening and metalling the road around the Residency, Trivandrum.

Demand.	Amount in Rupees	Particulars.
1114.		
XV. Police.	81,552	To meet the expenditure on account of the recruitment of 500 Armed Reserve Police temporarily for 6 months.
XVI. Agriculture and Fisheries.	1,011	To meet the expenditure on account of the increase in the staff of milkers, care-takers etc., of the Government Dairy Farm.
XXX. Scientific and Miscellaneous Departments.	6,555	To meet the expenditure on account of salaries, establishment etc., of the Government Museum.
XXXI. Miscellaneous charges.	469	For the granting of financial help to poor persons rendered homeless by sea erosion between Alapad and Kuzhithura.
XXXVII. Loans—Other Loans and Advances.	2,03,572	To meet the expenditure on account of the grant of a loan of B. Rs. 2 lakhs to the Trivandrum Central Co-operative Bank.
Do.	20,357-4-0	To meet the expenditure on account of the grant of a loan of B. Rs 20,000 to the Metropolitan Bank Ltd., Trivandrum.

PANEL OF CHAIRMEN.

PRESIDENT: Under Rule 3 (2) of the Travancore Legislative Rules, I have at the commencement of every session of the Assembly to nominate from among the members of the Assembly a panel of not more than two chairmen to preside over the Assembly in the absence of the President and the Deputy President. In accordance with that rule, I nominate Messrs. E. Subramonia Aiyar and N. Ramakrishna Pillai to the Panel of Chairmen for this session.

ELECTION TO THE STANDING FINANCE COMMITTEE.

PRESIDENT: The election of a member to the Standing Finance Committee, in the place of Mr. Kannara Gopala Panickar, will take place on the 11th February 1939, after the regular business of the House is over, under the chairmanship of the Deputy President.

DEMANDS FOR SUPPLEMENTARY GRANTS.

Demand II.—Medical.

MR. K. P. PADMANABHA MENON (*Electrical Engineer*): Sir, I move for a supplementary grant of Rs. 3,956 for the maintenance of the electrical installation in the Leper Colony, Noornad.

The motion was put and carried; and the grant was made.

Demand IV.—Public Works Department.

MR. G. B. E. TRUSCOTT (*Chief Engineer*): Sir, I move for a grant of Rs. 2,20,030,

(i) Rs. 2,17,910 for repairing the road between Alwaye and Munnar in connection with the introduction of the Transport Scheme, and

(ii) Rs. 2,120 for additions and alterations to the Cantonment Bungalow

MR. KOTTALIL P. ABRAHAM: What is the kind of work that is sought to be done?

MR. G. B. E. TRUSCOTT: The wooden bridges have to be mostly rebuilt, and the road has to be straightened as far as possible by easing curves; also a considerable amount of remetalling has to be done.

MR. KOTALIL P. ABRAHAM: May I know from the member what was the cost of the road as it was originally constructed?

MR. G. B. E. TRUSCOTT: I cannot give the cost now, Sir. The Transport Scheme for which this work is intended, when it is brought into effect, will be found to be a reproductive one.

PRESIDENT: The honourable member may perhaps explain to the House what the Scheme is.

MR. G. B. E. TRUSCOTT: The scheme is to transport about 8,000 tons of tea in one direction to Cochin, and 12,000 tons of foodstuff and other supplies in the other direction, between Alwaye and Munnar. All this trade up to now has been going outside the State through Tuticorin. But it is proposed now to carry tea to the Cochin Port in

which the Travancore Government is interested as a partner. Government in the last budget session budgetted for quite a substantial income by way of this transport. It is necessary to construct the bridges and remetal the roads so that we can carry the tea and bring the supplies without any danger to the transport. Not only will we be transporting supplies from Alwaye, but it is likely that a considerable amount of these supplies will be obtained from the Alwaye merchants, and so bring quite a lot of trade to Alwaye.

MR. KOTTALIL P. ABRAHAM: May I know from the member whether this scheme was not contemplated at the time of the last budget session?

MR. G. B. E. TRUSCOTT: It was contemplated, but details had not been settled at that time for us to be in a position to come before the House for any definite request for funds.

MR. KOTTALIL P. ABRAHAM: Is the amount to be spent this year itself?

MR. G. B. E. TRUSCOTT: We shall endeavour to do as much work as we possibly can.

PRESIDENT: Before putting this matter to the vote, I think one or two aspects of the matter may be detailed in as much as the honourable members are naturally jealous that things which could have been contemplated earlier should not be brought in as supplementary grants before the House. In the first place, a definite agreement had to be arrived at, between the planters and their organisation and the Government, by which they would undertake to transport all their produce through Travancore. It may be remembered that at the present moment a ropeway is working by means of which the tea that is produced in the Kannan Devan estates is taken down to the British territory and thence transported to Tuticorin from where the produce is shipped abroad. Similarly, rice and other provisions needed for coolies and other employees of estates are brought in from British territory by ropeway. The present scheme is that the companies will take all the produce through Travancore and to Alwaye. From there arrangements will be made for taking them for shipment at Cochin. Similarly, Alwaye will become enthrapor for the supply of all the provisions needed for the coolies in the estates. That is, Travancore will become the centre of provisions to these coolies and employees, instead of British India as at present. That is a big scheme handling both ways about 24,000 tons, and is expected to be one of the most paying propositions to the State. The actual agreement had to be entered into. Certain negotiations had to be conducted with the Cochin Harbour authorities, and the Government of His Highness the Maharaja of Cochin; and that was the reason why we were not in a position definitely to come before the House earlier; because, until the scheme chrystallised, a request of this nature would have been incompetent.

The motion was then put to vote and carried; and the supplementary grant was made.

DEMAND VII—EXCISE.

MR. M. P. JOSEPH: Sir, I beg to move for a supplementary grant of Rs. 1,345 towards expenditure for the pay of some additional clerks to be entertained in my office in the Statistical Branch, which is to be reorganised, as also Rs. 2,500 towards construction of some buildings for the Palkulam Salt Factory. In making this Demand I think it proper to explain to the House the reasons for making the first part of the demand.

In view of the importance of customs and trade statistics for trade in general, and for solving several problems connected with the Interportal Convention, Federation and the Cochin Harbour Scheme, the Government thought it necessary to have a trained staff to compile statistics. A temporary staff of 8 clerks was sanctioned for this purpose, and they were working in my office from 1108. The work done by them was found to be ineffective and inadequate; and therefore, the Head Accountant of my Office was sent to British India to study what is obtaining in important Customs Houses at Karachi and Bombay and also to the Office of the Director of Commercial Intelligence, Calcutta, to get first-hand training in compiling statistics. As soon as he returned he was appointed as Statistics Officer. As the work done by the clerks in my office was found to be inadequate, Mr. Krishna Iyer was ordered to prepare a report for the reorganisation of the Statistical Branch. Accordingly, he prepared a report and submitted that 39 clerks were necessary for doing the work in the Statistical Branch. That report was submitted by my predecessor Mr. Nilakanta Iyer when he was Excise Commissioner. Mr. Nilakanta Iyer studied the report, scrutinised it very carefully and tried to reduce the staff as much as possible, and brought it down to 17 clerks. Under this Scheme, the Statistical Branch in my Office is split up into two, the Statistics Branch, and the Audit Branch. In the Statistics branch, the proposal was to appoint 13 clerks, and for the Audit branch, 4 clerks. The work of the Statistics Branch consists in posting and registration of returns which are received in my Office from the 73 Customs Houses in the State. We are receiving about 600 manifests, declarations, shipping bills, bills of entry, etc., in my office daily. These have to be compiled and monthly and annual returns have to be prepared out of them. 10 clerks out of the 13 will be engaged in posting these returns. One clerk will do the registration, and the other miscellaneous work. Two clerks will be fully engaged in the compilation of monthly and annual statistics.

My friend Mr. Janardhana Pillai will agree with me how important statistics is for the trade in general apart from its importance to Government in its negotiations with British India and other countries who have commercial relations with Travancore. The staff proposed for this purpose is the irreducible minimum.

Now, in the Audit Branch in the Statistical Section, in the proposal is to have 4 clerks. At present, the audit of customs revenue is done by

the Assistant Excise Commissioners during their periodical inspections. This was found to be unsatisfactory and inadequate. I had sent my Statistical Officer to several of the Customs Horses to find out leakages of revenue. Every time he went he found out some leakage. Under these circumstances, it is proposed to have trained staff who have some practical working knowledge of Sea Customs and Land Customs law to audit the Customs Revenue. We have been able to collect about Rs. 2,000 by this occasional audit. These men will go round the several Customs Houses and do audit work. There is a lump sum provision of about Rs. 3,000 for the reorganised scheme. Out of this, the pay of the seven clerks of my office has to be met. There is a balance of about Rs. 1,330. A sum of Rs. 1,345 is required for meeting the pay of the remaining clerks. I may add that this matter was discussed thereadbare in the Finance Committee. I was cross-examined and re-examined.

PRESIDENT: The proceedings of the Finance Committee cannot be disclosed here.

MR. M. P. JOSEPH: All that I wish to say is, that this matter was threshed in the Finance Committee. I may assure the members that the money which you are asked to vote now, will not be wasted, ill-spent, and that it will bring additional revenue to Government. I put the motion for the acceptance of this House.

PRESIDENT: The motion before the House is that a sum of Rs. 3,845 be granted under Demand VII—Excise, for the reorganisation of the Statistics Branch in the Excise Commissioners Office, and for the construction of buildings for holding the office and the Guard Posts in the Palkulam Salt Factory.

The Demand was put to vote and carried. The grant was made.

DEMAND XVII—INDUSTRIES—INCLUDING CLAY REFINING AND PORCELAIN FACTORY.

MR. G. B. E. TRUSCOTT: Sir, I move for a grant not exceeding Rs. 30,000 in the Budget of the Ceramic Factory for completing the works allotted to the P. W. D. at Kundara, and for paying for the works already completed but not paid for. As it was expected that the work of construction would be completed before the end of 1113 no provision was made for this work in the budget for the year 1114. For these reasons I request that the members will be pleased to sanction this Demand.

MR. E. P. VARGHESE: May I know what amount was spent last year for this work?

MR. G. B. E. TRUSCOTT: The total estimated cost of the construction of the several buildings including wharf and jetty for the Clay Refining and Porcelain Factory at Kundara, amounts to Rs. 1,67,982.

The Demand was put to vote and carried.

The grant was made.

DEMAND XXVI—PORTS.

MR. G. B. E. TRUSCOTT: Sir, I move for a grant of Rs. 1,450 for the reconstruction of the kitchen and corridor in the Marine Bungalow at Alleppey. The reason for this is that during a heavy squall and storm, some trees fell on and damaged the kitchen attached to the Marine Bungalow. The work is an urgent one, and as funds are not available for the purpose in the sanctioned budget of the Marine Department, a supplementary demand for Rs. 1,460 for meeting the works is necessary.

MR. K. P. KOCHUKORATHARAKAN: ഈ പണി നടത്താൻ പോകുന്നതു ഈ നാട്ടിലെ സാധാരണ തേക്ക തടി കൊണ്ടോ അതല്ല ഇമ്പോർട്ട് ചെയ്ത തടി കൊണ്ടോ?

MR. G. B. E. TRULCOTT: Sir, I do not think it is.

MR. T. C. KESAVA PILLAI: ഈ കിച്ചനിൽ എത്ര ആളുകൾക്ക ഭക്ഷണം കഴിക്കത്തക്കവണ്ണം അരി വയ്ക്കാം?

MR. G. B. E. TRUSCOTT: It is for the reconstruction of the kitchen and corridor that money is now asked for.

MR. T. C. KESAVA PILLAI: May I know for how many persons the kitchen would prove useful?

MR. G. B. E. TRUSCOTT: It is a reconstruction and intended for the Port Officer, his family and his servants.

MR. T. C. KESAVA PILLAI: Can the honourable member say the approximate number by whom the kitchen could be used?

MR. G. B. E. TRUSCOTT: That depends on the Port Officer at the time.

MR. K. P. KOCHUKORAARAKAN: എൻെറ ചോദ്യത്തിന ഉത്തരം പറഞ്ഞില്ല.

MR. G. B. E. TRUSCOTT: I have already answered his question.

MR. M. SIVATHANU PILLAI: I could not hear a single word of what Mr. Truscott has stated.

PRESIDENT: In answer to Mr. Kesava Pillai's question what the Chief Engineer said was that the question of accommodatoin will depend on the Port Officer at the time.

MR. M. SIVATHANU PILLAI: I would like to know from the honourable member what the Port Officer was using for kitchen since the building was damaged?

MR. M. SIVATANU PILLAI: May I know from the member what was the Port Officer doing for the purpose of kitchen?

MR. G B E. TRUSCOTT: I do not know. But I know that during a heavy squall and storm some trees fell down and completely wrecked the kitchen.

MR. E. P. VARGHESE: May I know from the member for how many days the Port Officer was managing without a proper kitchen attached to his Bungalow, after this storm?

MR. G. B. E. TRUSCOTT: I do not know.

The Demand was put to vote and carried.

The grant was made.

THE PUBLIC ACCOUNTS COMMITTEE REPORT.

MR. M. GOVINDA PILLAI: Sir, I beg to move that the report of the Public Accounts Committee on the Audit and Appropriation Report for 1112 be taken up for consideration.

MR. T. P. VELAYUDHAN PILLAI: Before moving my first resolution I may be permitted to make a few general observations regarding the report of the Public Accounts Committee on the Report of Audit and Appropriation for the year 1112 M. E.

PRESIDENT: Under the Rules you are entitled to move your motion and then make your observations.

MR. T. P. VELAYUDHAN PILLAI: Sir, at the outset I must congratulate Government on account of the fact that there were no irregularities in reappropriation during the year. It is gratifying to note in this connection that the system of appropriation of the sanctioned amounts has satisfactorily improved as a result of the constitution of the Public Accounts Committee on the statutory basis. I am glad to find that the Public Accounts Committee has examined the necessity of establishing the Commercial and Industrial Museum at Alleppey with a Commercial Bureau attached to it, and that such a proposal is under consideration of Government. On account of the growing importance of the Alleppey town and the number of travellers and tourists visiting it, the establishment of such a museum has become an indispensable necessity. I am glad to find that the proposal for the establishment of a museum is under the consideration of Government.

I am constrained to observe that, in spite of the strenuous attempts made by Government, there is no considerable improvement in the matter of obtaining unnecessary supplementary and additional grants by the Head of several Departments. Page 60 of the Appropriation Report deals with the details of such unnecessary supplementary and additional grants. This is a sure index of the fact that several heads of departments were not sufficiently in touch with the progress of the expenditure from time to time. It is equally disappointing to note that the number of defalcations, misappropriations, and financial irregularities during the year was on the increase. The Land Revenue Department stands first in this respect. It is stated on page 175 of the Audit Report that an amount of over Rs. 85,000 due from the abkari contractors had to be written off as irrecoverable during the year. The loss is partly attributed to certain inherent defects in the system and rules. I would request Government to take early steps to put a complete stop to this sort of growing defalcations and misappropriation of Government money, and also to remedy the evils arising out of the inherent defects in the system and rules. It is seen from Page 115 of

[Mr. Puliyoor T. P. Velayudhan Pillai.]

the Appropriation Accounts that, out of a total allotment of Rs. 19,867 sanctioned for the amelioration of the backward communities, there was a saving of Rs. 4,717. The main reason for this saving is stated to be that full provision allowed for the improvement of education of backward class pupils was not utilised for the purpose. We can pardon any omission or even any defalcation. But this sort of making savings from the small funds allotted for the improvement of education of the backward class pupils is really sinful. I would urge that the Government may be pleased to take particular care to see that the whole amount allotted for such purposes is utilised in full, at least in future. With these general observations, I beg to move my first resolution:—

"This Assembly recommends to Government that action be taken against the Heads of Departments who did not submit a surrender report of the surplus funds at their disposal as per the rules.

MR. M. SIVATHANU PILLAI (*Tovala*): May I know what the member suggests in the cases where Government themselves have asked the Heads of Departments to surrender certain amounts?

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I would inform the member that by means of Article 244 of the Account Code, Part I, Government have already issued directions to the Heads of Departments to submit surrender statements in every year so far as each Department is concerned and we see that no useful result has come out of it. That is the reason why I am bringing by means of this resolution the particular aspect of the question to the attention of this House. Even though there was this definite direction to submit a formal report as soon as the Head of the Department foresees any lapse or savings, and to surrender whatever was not likely to be spent during the remainder of the year, such surrender statements were received in time during the year 1112 only from three Departments, *viz.*, the Financial Secretariat, the P. W. D. and the State Guests Department. It is also seen from the Appropriation Report that many of the controlling officers, could have anticipated such savings and surrendered the surplus funds in time. The belated submission of a surrender statement for over 15 lakhs of rupees by the Water Works and Drainage Department on the last working day of the year, *viz.*, 30th Karkadagam 1112, was not of any value, and hence it was taken as simply a lapse statement. This sort of behaviour on the part of Heads of Departments is a clear deriliction of duty; clear disobedience of Government orders, and they, no doubt, diserve to be severly dealt with. Hence I move that "this Assembly recommends to Government that action be taken against the Heads of Departments who did not submit a surrender report of the surplus funds at their disposal as per the rules", to the unanimous acceptance of the House.

MR. M. GOVINDA PILLAI (*Financial Secretary to Government*): Sir, it will be observed from the Audit and Appropriation Report submitted to this House by the Account Officer that stringent instructions have been issued to all departmental heads who defaulted to submit surplus statements that they should be more vigilant and more prompt in the submission of such reports in subsequent years. But I may, at the same time, inform the House that there may be certain departments where they could not anticipate in time the probable allotment which could be surrendered at the end of the year. In 1112, for instance in the Medical Department, it was not possible for the Head of that Department to anticipate that the medical supply would not be received in time. As a matter of fact, the lapse was entirely due to the circumstance that the medical supply did not arrive in time, although it was anticipated that it would arrive before the end of the year. Similarly, in the Judicial and Education Departments, the delay in giving effect to the standarisation scheme naturally prevented the heads of the departments concerned to anticipate these lapses. But in the case of other Heads of Departments who had every opportunity to anticipate such surrenders, stringent instructions have already been issued that in subsequent years such delinquent omission should not be repeated. I am sure that this assurance will satisfy the honourable member.

MR. PULIYOOR T P. VELAYUDHAN PILLAI: May I know what action they have taken against the belated submission of the surrender reports by the Water Works and Drainage Department on the last working day of the year?

MR. M. GOVINDA PILLAI: Explanation has been called for, and as soon as it is received necessary action will be taken thereon.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government whether they have taken any action against Heads of Departments who did not care to submit surrender reports as per Article 244 of the Account Code?

MR M. GOVINDA PILLAI: As I have stated, action has been taken in respect of those departments whose explanations have been received, and in respect of other departments necessary and stringent action will be taken in regard to their omission to do so.

MR. PULIOOR T. P. VELAYUDAN PILLAI: I beg leave of the House to withdraw the resolution on the face of that assurance.

The resolution was, by leave, withdrawn.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I move my second resolution—

"This Assembly recommends to Government that adequate and effective steps be taken against frauds and misappropriations as disclosed by the Audit Report."

During the course of my general observations regarding the Public Accounts Committee Report, I have already stated in detail that the number of the defalcations and misappropriations of Government money

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is on the increase. In my opinion the chief or the most important reason for this unhappy state of affairs is that adequate and effective steps are not taken against the delinquents. Punishments, in several cases, vary with personal and other considerations. If similar offences are committed by two different officers, one will be severely punished and the other may not at all be punished. I shall quote instances to support my position. The loss may be written off in the case of one; and recovered in the case of the other. It is high time for the Government to put a stop to this differential treatment in the matter of awarding punishments to delinquents on considerations of person and community. It is also seen from the report that there is no continuity of policy or uniformity in the matter of awarding punishments. If a high paid officer commits an offence he will not at all be punished; at the same time, if a low paid officer is found to have committed a similar offence he will be severely punished, and the whole amount of loss will be recovered from him. Chapter V of the Audit Report deals with the action taken on previous year's report. Item Nos. 18 and 19 are instances which go to prove my submission. Item Nos. 18 and 19 in Chapter V of the Audit Report will go to prove the force in my argument.

Reference to the previous report.	*Nature of the irregularity.*	*Action taken.*
18. Para 59, page 136.	Loss of library books in a college and in a Vernacular Middle School.	

"Government sanctioned the missing books in the College being written off the accounts. As for the loss of books in the Vernacular Middle School it was made good from the party responsible. The total amount to be recovered was Rs. 28-10-8 of which Rs. 19-13-8 has already been recovered in 5 instalments and the balance is to be recovered in one instalment. Regarding the recovery and remittance of the last instalment, the report of the Division Inspector is awaited."

That is one instance where different treatment has been given to officers of different status for a similar offence.

Reference to the previous report.	*Nature of the irregularity.*	*Action taken.*
19. Para 60, page 136 of the report.	Preferring 3 arrear Establishment pay bills of a Vernacular Middle School for Girls containing overlapping claims.	The explanations of the Head Mistress who prepared the Bill, and of the Assistant Inspectress of Girls' Schools, and the clerk who scrutinised the bills were obtained. The Head Mistress of the School has been severely warned. It is also reported that the mistake in the office of the Assistant Inspectress was due to inadvertence.

Nos. 9 and 15 will also prove my contention.

Reference to the previous report.	*Nature of the irregularity.*	*Action taken.*
9. Para 21, pages 108 and 109 of the Audit and Appropriation Report for 1110 and para 3, page 152 of the Audit and Appropriation Report for 1111.	Loss on account of the failure to lease out certain trees in 1103 and 1104 by the staff of a Taluk Office, Rs 444-8-0.	A sum of Rs. 142 has already been recovered from the clerk concerned.

It is not seen who is responsible for the balance of the amount or whether any punishment was given to the delinquent.

15. Para 54, page 135 of the Audit and Appropriation Report for 1111.	Misappropriation of Rs. 1,486-14-1 out of the bus warrant amounts in a D. S. P's office.	Government called for the explanations of the D. S, Ps. who were in charge of the District during the period of defalcation, and finding that the explanation furnished by one of them was unacceptable, they ordered that officer being fined Rs. 5. Action is in progress in regard to the recovery of the balance of Rs. 952-3-9 still due from the delinquent, Head Accountant.

It is not seem what punishment was given to the Head Accountant concerned.

So, my submission is that the number of defalcations and misappropriations are on the increase, because Government are not taking adequate and effective steps against such defalcations and misappropriations So, I move my resolution for the unanimous acceptance of the House.

MR. M. GOVINDA PILLAI: Sir, Government are aware that there have been cases of leakages of revenue in several departments. All possible human precautions have been taken to prevent such leakages; but on account of the perversity of some subordinates, some such leakages do occur. But at the same time, I must express my surprise that the honourable member should have stated that punishments awarded by Government to such delinquents are always coloured or prejudiced by personal considerations.

PRESIDENT: I do not think the honourable member used the expression ' always .'

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I hold the Head of Departments responsible for such considerations.

MR. M GOVINDA PILLAI: That statement is far from the truth. I must certainly repudiate that statement; because, from a consideration of the facts and circumstances of every case, it will be seen that in the exercise of their discretion they have awarded punishments in each case on its individual merits. It will be seen from the report itself that every case of misappropriation for fraud has been dealt with then and there. Some are under investigation; and in some other cases investigation has been completed. Offenders have been brought to book. Subordinates have been suspended, dismissed and heavily fined. Punishments must naturally vary in individual cases. All the facts and circumstances of the cases are not before the House. Government are in possession of them. Each case will have to be decided on its own merits, and according to the seriousness of the offence they have to arrive at a decision in punishing the offenders. But they have never been swayed by the consideration that the delinquent was a mere clerk or that he was the Head of a Department. The blame was judiciously apportioned between the persons responsible for the happenings.

In regard to the particular case mentioned by the honourable member, I am not in a position to give all the information regarding the nature of the punishment awarded to the Head Accountant or to the clerk concerned. But in regard to the loss of books, I may say, that the loss of books in the college and that in the vernacular schools must naturally stand on different footings. I know that books from the college library were lost during several years, and when explanations were obtained from the Principals concerned, it was found that they were not to blame but the clerks and the librarians who were in charge of the library. Explanations were called for from them, and on their receipt it was found that the action taken was the legitimate and proper thing for the Government to do. In regard to the loss in the vernacular schools it was comparatively small, and there was absolutely no comparison with the loss in the college.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know whether in the case of a particular offence where the loss is small, the officer concerned will be severly punished? Is that the policy of the Government?

MR. M. GOVINDA PILLAI: It will depend upon the merits of each case. It will not depend upon the amount of the loss.

MR. KOTTALIL P. ABRAHAM: May I know the nature of the punishments awarded?

MR. M. GOVINDA PILLAI: In some cases subordinates have been fined and in other cases they have been dismissed, and probably in some other cases where the guilt has not been brought home to the party he has been warned.

MR. P. SIVARAMA PILLAI: May I know whether punishment will vary in regard to the same kind of irregularities?

MR. M. GOVINDA PILLAI: The punishments will depend upon the circumstances and merits of each case. It does not matter whether the loss is small or big.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I beg leave of the house to withdraw the resolution.

The resolution was, by leave, withdrawn.

PRESIDENT: I am prefectly willing to allow the honourable member, Mr. Nadar, to club all his resolutions together and speak on them. Or would he prefer to speak separately?

MR K. NARAYANAPERUMAL NADAR: I wish to speak on them one by one.

PRESIDENT: Very well.

MR. K. NARAYANAPERUMAL NADAR: Sir, in the Report of the Public Accounts Committee for 1112 in paragraph 3 it is stated "the savings amounted to Rs 46·86 lakhs or 18·35 per cent. of the final aggregate grant and were larger than the savings for the preceding year... .." Sir, the question is whether Government are justified in having such a large saving. It is also painful to find that this huge saving of Rs. 46·86 lakhs is chiefly made up by savings under capital expenditure and investments on reproductive works because savings under capital expenditure and investments on reproductive works comes to about 33.62 lakhs against the total savings of 46·86 lakhs. The relevant question is whether Government are justified in making such a huge savings under these useful items of expenditure. Sir, investments on reproductive works are very useful and these must be fully spent. If it is a saving under non-votable items I should be only glad. If it is a saving under political and miscellaneous expenditure I would be equally glad. If it is a saving under salaries of big officers including the Dewan I would be rather jubilant. But if it is a saving under capital investments and the reproductive works I cannot countenance it, Sir. There, Government are not justified to make such large savings. The usual explanation given by the Government is that they have no control over extraneous circumstances. That is a lame excuse. Government have made a savings of Rs. 11·26 lakhs on the item of expenditure in grant No. III *i. e.*, water supply to the municipal towns of Alleppey, Nagercoil and Shencotta. In 1112, the final grant was Rs. 13 lakhs. The savings effected was 11·26 lakhs. Sir, supply of good water to these towns is very important particularly in the case of Nagercoil for which we were agitating for the last 25 years. There are very many tanks and wells in the town, but water is scarce and brackish. It is about 2 years since the grant was made for the supply of good water to the town of Nagercoil. But Government are not able to give water, and I think it may take a quarter of a century, if they proceed to the work at this rate, to complete the water supply scheme in Nagercoil. Such being the case Government are not justified in making vast savings under Capital Works. With these words I move the motion and commend it for the acceptance of the House.

MR. M. GOVINDA PILLAI: Sir, the honourable member seems to be under a misapprehension that the Government were very anxious to effect savings. But the fact is that the Government were really anxious to spend as much as possible. I hope the honourabl

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member would concede that there are difficulties in the way of spending the whole of the allotted amount when we take up such important and costly enterprises as water supply schemes. There are several preliminary things to be done before actual expenses are incurred. Surveying and acquisition of lands take time, and naturally expense on the scheme can be incurred only after these are completed,

MR. M. SIVATHANU PILLAI: May I know whether Government would not lose in paying interest if such works are delayed.

MR. M. GOVINDA PILLAI: I do not agree with the honourable member.

MR. M. SIVATHANU PILLAI: Sir, I am speaking in respect of water supply secheme for Nagercoil where the reservoir is being kept waiting to be utilised. The reservoir has been caused to lie idle for the past 1 or 2 years; and payment has already been made hereby Government lose the interest on the investment on the reservoir.

MR. M. GOVINDA PILLAI: I thank he honourable member for the information. But I am not aware of it. The point is that there are items of work to be gone into before the actual work is begun.

MR. M. SIVATHANU PILLAI: May I know whether it is not the intention of Government to budget huge amounts for reproductive works every year, to avoid being censured?

MR. M. GOVINDA PILLAI: No, Sir, I certainly disagree with the suggestion therein contained. I may say that the department was certainly anxious to proceed with the work as speedily as possible.

MR. M. SIVATHANU PILLAI: May I know whether there was any justification to complete the reservoir at a cost of Rs. 50,000 or Rs. 60,000 and then allow it to lie idle till water can be expected from the dam?

MR. M. GOVINDA PILLAI: I am not in a position to give any professional opinion to justify the work that has been already done. The Chief Engineer can possibly explain its justification.

MR. M. SIVATHANU PILLAI: Was it not the intention of Government that this work might lie over till a definite period?

MR. M. GOVINDA PILLAI: No such intention was in the mind of Government. My point, as has been already elaborated, is that capital works take time for completion; and hence savings are not made intentionally. And on account of unforeseen difficulties and other justifiable causes such lapses do occur. So, I desire once again to impress upon the honourable member, Mr. Narayanaperumal Nadar, that these lapses occur on account of difficulties to spend the allotted amounts within a particular period.

MR. K. NARAYANAPERUMAL NADAR: Sir, in view of the explanation given by the Financial Secretary I beg to withdraw the resolution.

Sir, I beg to move that this Assembly recommends to Government to take severe action against those P. W. Officers who accept tenders other than the lowest for reasons which are not justifiable.

Sir, when the Auditor inspected the accoun's of P. W. D. Offices it was found that there were many tenders, accepted by the officer concerned, which quoted rates higher than the lowest. In page 204 of the Audit Report for the year 1112, the reasons recorded for accepting such tenders are given; and they have been very often unconvincing. One reason given is that the contractor in question is a most reliable con'ractor. Another reason given is that the contractor whose tender was accepted has always been entrusted with the maintenance work on all buildings of importance in this town, and hence he is given the work as the rates are reasonable. The third reason for accepting the second lowest is that the difference between the first and the second is only Rs. 14. Another reason given is that the second lowest selected after reducing certain rates, being more reliable, the difference amount as accepted being Rs. 57. Then again, another reason is given that the second lowest tenderer has other works to complete in time. The difference in amount between the first and the second is Rs. 242. If this were so, works can be given to any man chosen by the officer, irrespective of his tender rates. This abuse is chiefly found in the Nagercoil Division. That is why I had tabled the following questions to be asked in this house.

"(a) No. 36. Will the Government be pleased to state whether the P. W. Office in Nagercoil was audited in 1112 and 1113?

(b) How many cases of acceptance of tenders other than the lowest were noticed?

(c) The reasons recorded for the acceptance of such tenders."

I imagine therefore, Sir, that contracts are given to certain contractors in whom the P. W. Division Officers were interested. Sir, the expenditure incurred by the Public Works Department is a waste, and I bring forward this resolution to urge upon the attention of this House that the Department needs thorough over-hauling.

MR. KOTTALIL P. ABRAHAM: May I know whether more than one contract can be given to one person at a time and whether two tenders quoting different rates are sent by one person, and one of them is preferred.

MR. K. NARAYANAPERUMAL NADAR: I think there are many cases of acceptance of tenders other than the lowest.

MR. M. GOVINDA PILLAI: Sir, Government are in full sympathy with the principle underlying this resolution, and as far as possible Government and he Department will act up to it. It is seen from the report that stringent and strict instructions have been issued by the Chief Engineer to the Division Offices, and as far as possible the lowest tender alone will be accepted. But I may say for the information of the House that in all cases the acceptance of the lowest tender may not be feasible in the interest of work. There is at present so much of cut-throat compe'ition that the lowest tender rate may not be always relied upon. The Executive Engineer concerned can by using his discretion give contracts to certain persons whom he may know well regarding their financial condition and capacity for the execution of a particular work. It is only in such cases that the Chief

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Engineer or the Executive Engineer accepts tenders other than the lowest. It is not merely on personal or other consideration that the lowest tender is rejected. I may once again impress upon the honorable mover that stringent instructions have already been issued by the Government to the officers concerned to adhere to the principle of accepting the lowest tender as far as possible

DEPUTY PRESIDENT: Has the Chief Engineer any observations to make?

MR. G. B. E. TRUSCOTT: Sir, I have little more to say than what the Financial Secretary has said. Every time and in every case the Division Officer, when he does not accept the lowest tender, reports to me and I satisfy myself that his reasons are acceptable or not. In some cases I have not agreed and have accordingly issued necessary instructions in the matter.

MR. KOTTALIL P. ABRAHAM: May I know whether you have received any complaints against the Division Officers from the contractors?

MR. G. B. E. TRUSCOTT: Occasionally I do receive complaints, and there I always investigate.

MR. K. NARAYANAPERUMAL NADAR: May I know whether you have taken any disciplinary action against any P. W. D. Officer for accepting tenders other than the lowest?

MR. G. B. E. TRUSCOTT: Yes, Sir; I have.

MR. K. NARAYANAPERUMAL NADAR: May I know the name of the officer?

MR. G. B. E. TRUSCOTT: No, Sir.

DEPUTY PRESIDENT: Mr. Nadar, do you want to press the resolution?

MR. K. NARAYANAPERUMAL NADAR: Sir, I press for a division.

The motion was put to the vote of the House and lost.

MR. K. NARAYANAPERUMAL NADAR: Sir, I demand a poll.

DEPUTY PRESIDENT: As nobody rises in favour of the motion, a poll is not necessary.

MR. K. NARAYANAPERUMAL NADAR: Sir, I beg to move that this Assembly recomends to Government that the expenditure under P. W. works should as far as possible be evenly distributed in each quarter of the year and that the work done and measured in one month should ordinarily be paid for in the next month.

Sir, in moving this resolution I may point out that page 148 of the last year's Audit Report shows a rush of expenditure during the last quarter of the year. So a rule should be made to avoid such rush of expenditure in a particular period of the year. In Madras and Mysore there is a rule that the expenditure in a year should be evenly distributed and that the work done and measured in one month should ordinarily be paid for in the next month. But in 1112 there appears to be no improvement in this way. On page 217 of the Audit report for 1112 a statement is given distributing the expenditure in each divi-

sion for the 4 quarters of the year. From this we find that the sums spent in the 4th quarter of the year, that is towards the closing month of the year, are larger than the sums spent in all the other 3 quarters of the year. Again we notice that the payments made in Karkadakam are larger than all the payments made in the previous three quarters. Therefore, Sir, I submit that it is a defect in the administration. With these words I move the resolution and commend it for the acceptance of the House.

MR. M. GOVINDA PILLAI: Sir, Government are in full agreement with the object sought for by this resolution. But in regard to the resolution I may inform the House that there are practical difficulties in giving effec to the principle underlying it. The House will remember that the Chief Engineer makes the separate allotments for the works only after the Budget Session is over, say, in the month of Chingam Therefore it is practically impossible to begin work earlier than in Kanni, and so expenditure during the first quarter will ordinarily be less. For the execution of important works several preliminary things have to be gone through and this will naturally take time.

MR. KOTTALIL P. ABRAHAM: May I know whether the Chief Engineer does not prepare the statement of expenditure for different items before the Budget Session?

MR. M. GOVINDA PILLAI: No, Sir, it is only after the Budget is passed by the Legislature and the Government sanctions the allotment for the Department that the Chief Engineer begins to take up the different works for execution. So what I say is that works cannot ordinarily be done within a definite period or at a particular period. For example, the maintenance of a road during the hot part of the year is found to be very difficult, as plenty of water is required for the work. So, delay is inevitable. Such contingencies stand in the way of achieving the objects adumbrated in the resolution. You will find from the Committee's Report that Government have already devoted their attention to the matter to effect an equalisation of expenditure in the several quarters of the year. On page 218 of the Report it is stated as follows:—

"As a result of further correspondence on the subject between the Government and the Chief Engineer, the latter agreed to observe the following proposal in expending the grants provided for the works.

First quarter	15 per cent.
Second ...	25 ...
Third ...	25 ...
and Fourth ...	35 ... "

But it remains to be seen whether this will be a practical scheme. Government trust that the Public Works Department will see that the scheme is given effect to. Probably in a year or two I may be able to assure the House that the scheme has proved a success.

MR. K. NARAYANAPERUMAL NADAR In view of the explanation given by the Financial Secretary I beg to withdraw the resolution.

The resolution was, by leave, withdrawn.

The motion by the Financial Secretary that the Report of the Public Accounts Committee and of Audit and Appropriation for 1112 be adopted, was then put to vote and carried.

LEGISLATIVE BUSINESS

THE TRIVANDRUM CITY MUNICIPAL BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to move that Messrs. C. P. Gopala Panicker, P. V. Mathai Chemparathil and P. Narayana Pillai be nominated members of the Joint Committee on the Trivandrum City Municipal Bill, in the place of Messrs. G. N. Tampi, K. T Thomas and A. Thanu Pillai.

MR. K. P. PADMANABHA MENON: I second it. The motion was put to vote and carried.

THE TRAVANCORE DISTRICT MUNICIPALITIES BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to move that Mr. K. P. Kochukoratharakan be nominated on the Travancore District Municipalities Bill in the place of Mr. K. T. Thomas.

MR. K. P. PADMANABHA MENON: I second it. The motion was put to vote and carried.

THE TRAVANCORE WORKMEN'S COMPENSATION BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to present the report of the Select Committee on the Travancore Workmen's Compensation Bill.

In presenting the report, I may be permitted to make a few observations. The Bill was introduced sometime back and it was pending with the Select Committee for a pretty long time. In the meanwhile, certain amendments were made in the British Indian Workmen's Compensation Act; and the Select Committee had, therefore, the advantage of considering and in most cases of adopting those amendments, so that our legislation on this matter may be on a par with the legislation outside. Honourable members might know that all those amendments, have been referred to in detail in the Select Committee Report; and the Bill as revised contains important changes. These amendments, Sir, I believe, would put the Bill beyond all controversy and make it acceptable to both the labourers and employers. So far as I could see, there is not much to be moved by way of amendments to these provisions because this will in effect be the most up to-date Bill on this matter I move that the Bill as revised by the Select Committee be now considered.

MR. K. P. PADMANABHA MENON: Sir, I second the motion.

DEPUTY PRESIDENT: The question before the House is that the Bill as revised by the Select Committee be considered.

The motion was put to vote and carried.

Clause 1.

The question that Clause 1 do stand part of the Bill was put to vote and carried. The clause was added to the Bill.

Clause 2.

SRIMATHY C. O. PONNAMMA: Sir, I beg to move, in Clause 2, sub-clause (n), insert as (iii) the following:

"employed in any hazardous occupation even though the employment be of a casual nature."

I also beg to move for the addition of the word 'or' since there is an omission of the same. According to the definition, it is omitted to include the casual labourers in the category of workmen. The object of my amendment is to include such people who are temporarily employed to work under an employer, so that they may also have the benefit of this legislation. In Schedule II a list of workmen is given; but in my opinion, that schedule is not an exhaustive one. There may be labourers who can be classified under workmen, who may meet with accidents when serving an employer. The employer can then easily get rid of them by saying that they are only casual labourers. In hazardous occupations such as the construction of a bridge or a building, additional hands than those who are usually employed may be necessary. According to this definition their employment is of a casual nature. They cannot claim any benefit as resulting from this piece of legislation. It is quite possible that when such casual labourers demand compensation, the employer can refuse the same on the ground that the employment is of a casual nature. Therefore, I beg to move this amendment for the acceptance of the House.

MR. E. P. VARGHESE: I support the amendment.

MR. PUTHUPALLY S. KRISHNA PILLAI: I oppose the amendment Sir, for more reasons than one. In the first place, there appears to be a misapprehension about the implication of the clause as it stands under this motion. The mover wants also persons employed in any hazardous occupation even though the employment be of a casual nature, to be included among the class of workmen who are entitled to compensation under the provisions of this Bill. My humble view of the matter is, that the Bill as it stands goes farther than this. All those whose employment is of a casual nature are even under the existing provisions entitled to compensation, it need not be work of a hazardous nature. Even if the work be of a non-hazardous nature the labourer is, under the existing provisions, entitled to compensation. The effect of the amendment would be to make a distinction between hazardous and non-hazardous occupation. The clause as it stands does not make any distinction between hazardous and non-hazardous occupation. The employee, whether casual or otherwise, is entitled to compensation irrespective of the question whether the employment is hazardous or non-hazardous. The amendment if adopted would be restrictive of the scope of the section. If that is so, I ask the representative for labour, why she wants to limit the scope of the section to workmen who are employed on hazardous labour. The clause as it stands reads thus:

'Workmen' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose of the employer's trade or business.)

[Mr. Puthupally S. Krishna Pillai.]

So that, in order that the workman may not come within this definition two conditions should be present. One is employment of a casual nature and the other is that it should not be for work other than for the purposes of the employer's trade or business. If a workman is employed for purposes of the employer's trade or business, it does not matter whether his employment is casual, seasonal or permanent or whether the employment is or is not hazardous; he is a workman for purposes of the Bill. The reason is that he fulfils only one and not both the conditions. That is the limitation that is imposed. If both the conditions are satisfied he does not come within the definition. If only one is satisfied he comes within it. In the ordinary circumstances, a person who is connected with the trade or business of the employer is entitled to compensation even if the work be not of a hazardous nature. Then why should it be work of a hazardous nature? The amendment, therefore appears to be unnecessary.

MR. KOTTALIL P. ABRAHAM May I know whether the amendment cannot be taken as an explanation of the Section as it is found in the Bill?

MR. PUTHUPALLY S. KRISHNA PILLAI: As the member in charge of the Bill, I cannot be concessional in the matter of lagislation. If it is an explanation it must come in as a matter of explanation. The member brings it as sub-clause (iii) of sub-clause (n). There are two clauses mentioned under clause (n).

> "(i) a railway servant not employed in any such capacity as is specified in Schedule II, or
>
> (ii) employed in monthly wages not exceeding three hundred rupees in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Regulation and whether such contract is express or implied, oral, or in writing but does not include any person working in the capacity of a member or Our Military Forces; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them;"

The third clause now sought to be included is "employed in any hazardous occupation even though the employment be of a casual nature". The principle contained in the definition is that in order that the labourer may be entitled to compensation he must be employed in the trade or business of the employer. If that is so this will exclude only persons who are not employed on the trade or business of the employer. That is the gist of the section. In every other respect he will be entitled to compensation. If my friend Mr. Kottalil P. Abraham who is not carrying on a trade, engages a person to whitewash his house, and if the labourer falls down and is enjured, he is not entitled to protection because both conditions attach to him. He is a casual employer employed for purposes other than the employer's trade or business. In other words, even if it is a hazardous work the labourer is not entitied to compensation. But in the case of say, Mr. Chandamiah Sahib, who is a salt merchant, for purposes of illustration, if the same labourer is engaged for the purpose of attending to some work of a casual

nature in the factory, even if the work be not of a hazardous nature the labourer is within the definition and entitled to protection. It does not matter whether the work is of a hazardous or non-hazardous nature, because the labourer fulfils only one and not both conditions.

DEPUTY PRESIDENT: The idea of the honourable member might be to extend the scope of the Bill by including workmen whose occupation will be of a casual nature. Those persons whose employment is of a casual nature are obviously excluded under clause (n), first portion. The member wants to include people whose employment is of a casual nature provided the employment will be hazardous. That is the idea.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, my point is that all casual labourers are protected provided their work relates to the trade or business of the employer. The amendment looks as if the clause excludes all casual workers. Casual workers are excluded only if the employment is for a non-trade or non-business purpose of the employer.

DEPUTY PRESIDENT: The House will now adjourn and re-assemble at 2.

The Assembly adjourned for lunch at 1 p. m. and re-assembled at 2 p. m. the President presiding.

NEW MEMBER.

Mr. C. V. Chandrasekharan took the oath and signed the rolls.

LEGISLATIVE BUSINESS.—(*contd.*)

THE TRAVANCORE WORKMEN'S COMPENSATION BILL—(*contd.*)

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I was pointing out how the clause as it stands in the Bill is more beneficial to the labourer than it would be if amended as now proposed. Clause 2 (n) says

> "(n) 'workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business)........

In order that a labourer may not come within the definition of the term 'workman', two conditions have to be fulfilled, namely, (1) the employment should be of a casual nature, and (2) the employment must be for a purpose other than the employer's trade or business. In other words, if the employment, whether casual or not casual, is for purposes of the employer's trade or business, the employee will be a workman under the definition. Under the definition as it stands, whether the employment is hazardous or not, the workman will get the benefit of this legislation if the work is for the purpose of the employer's trade or business.

The only class of servants that will be excluded from that clause is casual servants engaged for any domestic work. I hope it is not the intension of the mover that such workmen also should be included. Even if there is any such object behind this motion, I think that the nterpolation of Sub-clause (iii) will make it redundant.

[Mr. Puthupally S. Krishna Pillai.]

I have perused the English Law on the subject as also the Indian Act; in both those enactments the provision is similar to the provision now in the Bill. The object of the present definition is probably to include the case of casual workmen engaged for domestic purposes. Neither the English nor the Indian Act has gone to the extent to which the member apparently is contending for Domestic servants employed for the season or until otherwise terminated are still within the Bill.

The exact import of the proposed amendment is not quite clear to me, Sir. If it is the interests of the labourers that the mover of the amendment has in view, then, certainly, the provision now in the Bill is better. I am sure the mover herself would grant that she should not be made to pay compensation for a cooly whom she engages for half a day for white-washing her dwelling house. Even if that is what she wants, I submit, the amendment ought to be worded differently.

Since I find that the amendment as it stands restricts the scope of he present provision in the Bill, and I am not in full agreement with the supposed meaning which it might bear, I oppose it.

MR. E. SUBRAMONIA AIYAR: Sir, my apprehension is that the amendment may not serve the purpose for which it has been brought in. The object of the mover seems to be to extend the benefit of this measure to a larger number of persons than has now been contemplated by the provision in the Bill.

A reading of the provision now sought to be amended together with the amendment makes it clear that the amendment only tends to restrict further the operation of the provision. In this connection, clause 2 (n) has to be read along with schedule II; because although the former provision is a defining section, the definition is not really there; you find the definition really in the schedule.

One point which strikes me most in considering this amendment is the fact that it restricts the scope of the provision to *hazardous* occupations. Sir, in matters of this kind, endeavour should be made to make the law as certain and as definite as possible. It should not be left to the courts to determine whether a particular occupation is hazardous or not. Hazard is always a question of degree. Every one of us knows what the result will be if we leave such matters to be determined by the courts in each case; the decisions will depend on several currents operating in the minds of the judges. An occupation which one court may regard as hazardous may be regarded as not so by another court, and conflicting dicisions will come in. Therefore it is that, in the schedule, attempt has been made to define such occupations by enumerating them one after another. I would invite the attention of the House to schedule II. It says-

"The following persons are workmen within the meaning of Section (2) and subject to the provisions of that Section, that is to say, any person who is (i) employed' otherwise than in a clerical capacity or on a railway in connection with the operation or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity.............

I do not want to tire the patience of the House by reading the whole of it ; there are twenty-four cases contemplated in schedule II. A close examination of the schedule will reveal the fact that the attempt has been to lay down as clearly as passible what are the occupations which would entitle the workman to the benefit of the measure. Firstly therefore, because the amendment has left it to the courts to determine what is hazardous, and what is not hazardous I would oppose it.

Further, so far as I have been able to see, in schedule II, there is no question at all about the duration of the employment; it is not stated there that, in order that a workman must be entitled to the benefits of this measure, he should have worked for a particular period. The period is not the test at all. The period of twelve months has nothing to do with the actual period of employment of a particular workman. What is stated is that workmen in a particular premises would be entitled to the benefits of this enactment only if for a period of twelve months preceding the accident not less than fifty workmen have been working in the premises A careful reading of schedule II makes it clear that the benefit of the measure would extend to workmen engaged in the various occupations detailed in that schedule, whatever may be the period of the actual employment of individual workmen. No distinction is sought to be made there between casual employment and so called permanent employment. I am sure, once that misapprehension is removed, no necessity for the proposed amendment would arise.

As I said at the outset, Sir, the tendency everywhere is to make such laws definite and certain ; unless that is done, the remedy sought to be provided would cease to be effective. The object of this measure is to determine definitely the relationship between employer and employee, to lay down clearly their rights *inter se*, to provide something like insurance as it were against accidents, in favour of the employees. That being so, it is better that the law is absolutely clear and definite leaving no room for the courts to go into the merits of individual cases.

I am therefore at one with the Legal Remembrancer in my view that the proposed amendment does not improve the lot of the workmen in any way whatsoever; nor does the provision as it is exclude from the operation of the bill any workman who really deserves compensation for injury sustained by him in the course of his employment.

The point for the House to consider is—are we to extend schedule II? That is the real question. Are we to extend the Act to some more occupations where a workman may be entitled to compensation. If that is the idea, specific reference to such occupations has to be made ; and we should not merely add what is called an omnibus clause "hazardous occupation." If anybody is excluded at all, as was pointed out, it is only the person whose employment is of a casual nature and who is employed otherwise than for the purpose of employer's trade or business' The exception is really no exception at all. In fact, the idea of the Act

[Mr. E. Subramonia Aiyar.]

seems to be that it is the workmen who are employed in a particular occupation or under an employer for the purpose of his trade or business who shall be compensated. The policy seems to be that if a person carries on a business or trade, he must bear the risks attendent thereon. No doubt at one time we might have thought that carrying on a trade or carrying on some business was a matter purely within the liberty of the individual; but modern conditions necessitate some liability being thrown upon persons who carry on business of their own. If you carry on business on a large scale employing a large number of people, and make a profit, certainly the State says that there is a duty cast upon you to see to the comforts, requirements, losses and the injuries which may be caused to the people whom you employ. It is nothing but an extension of the ordinary law regarding domestic relations. Certainly there is a duty cast upon an individual to maintain the members of his household The reason for it may be different. But here the assumption is that the person who is able to bear the liability is the employers and if such liability is to be imposed upon him, the workman must be a person employed in the business The liability is the liability of the business carried on by the employer and not of the employer. That seems to be the basis of the Workmen's Compensation Act. It seems to me therefore that the exception, in the case of employees of a casual nature but not engaged for the purpose of the employer's trade or business, will create confusion. To my mind it appears that the object of the mover certainly requires consideration; but in the form in which the amendment is brought, it does not improve the matter at all. On the other hand it will make the provisions of the Bill to a certain extent indefinite and vague which on account of the principles underlying legislations of this nature should not be permitted.

SRIMATHI C. O. PONNAMMA: I beg to withdraw the amendment

The amendment was, by leave of the House, withdrawn.

The question that Clause 2 do form part of the Bill was then put to vote and carried. The clause was added to the Bill.

Clauses 3 to 39.

The question that Clauses 3 to 39 (both inclusive) do s and part of the Bill was then put to vote and carried; and the clauses were added to the Bill.

SCHEDULE I.

SRIMATI C. O. PONNAMMA: Sir, I beg to move the following amendment to Schedule I:

Add "permanent disfigurement" in the left column, and "10" in the right column below "loss of any finger other than index finger in the left column and "5."

There is provision in this Bill to pay compensation in almost all cases where there is loss of earning capacity to the workman. Though disfigurement in the strict sense does not cause loss of earning capacity to the workman it should be calculated as acting as a hindrance in his securing employment. A person whose features are disfigured owing to

accident is likely to lose his employment, and in that case he will be injured very much. The man's personality may count much and it will increase or decrease his value in the labour market. There is also an aversion on the part of the employer to give employment to a labourer with a disfigured face. Therefore the employee is placed at a very great disadvantage. I therefore beg to submit that permanent disfigurement should also be calculated as depreciating the earning capacity of the workman by ten per cent. I therefore move the amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I oppose the amendment. We are now legislating for workmen, and are now at fixing the compensation due to workmen.

PRESIDENT: Supposing permanent disfigurement lessens the chances of obtaining employment, does it not come within the provisions of the Bill?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir. It comes within the definition of the expression in 2 (g). As I said, we are now legislating only for workmen. If the disfigurement of the workman in any way tends to his capacity being diminished, it is a disablement which is contemplated in the definition contained in clause 2 (g) which we have already adopted. Partial disablement includes disablement which is of a temporary nature and is such as reduces the earning capacity of a workman in any employment.

PRESIDENT: I take it that the honourable member is making a distinction between the ability to take up employment and the ability to get employment. If you are ugly, you may not get the job.

MR. PUTHUPALLI S. KRISHNA PILLAI: In some cases it is true. That must be in the case of a workman and the disfigurement should be such as lessens his chances of getting employment. If that is so, it comes within the definition in clause 2 (g). There have been decided cases of the House of Lords where that question has been considered. I shall only refer to one decision on the matter.

> "There is incapacity for work when a man has a physical defect which makes his labour unsaleable in any market reasonably accessible to him, and there is partial incapacity for work when such a defect makes his labour saleable for less than it would otherwise fetch."

> No definite rule can be laid down as to what conditions constitute partial incapacity in cases not covered by Schedule I since facts will differ in practically every case. It may be said, however, generally that incapacity or disability cannot be found to be total, where it appears that the claimant's earning power is not wholly destroyed, and that he is still capable of performing some remunerative employment. In such a case, it stands to reason that he is under the obligation of making active efforts to procure such work as he can still perform."

Then again obvious disfigurement is not necessary, and true proof of lessening capacity to obtain work is sufficient.

PRESIDENT: What is the reference to that case?

MR. PUTHUPALLI S. KRISHNA PILLAI; 5 B. W. C. C. 459. There are also the following cases:—Ball *v.* Hunt (1912) A. C. 496, Martin *v.* Barnet (1910), 3 B. W. C. C. 146) Bywater *v.* Stehert (1932) 25 B.W. C. C. (422)

[Mr. Puthupally S. Krishna Pillai.]

The first case is one in which a blind eye had to be removed as a consequence of some injury. He had to go about thereafter without an eye-ball in his eye. That lessened his chances of getting employment in the kind of work in which he was engaged at that time. It was said that it was sufficient disfigurement as would disable him from getting a job similar to the one that he was having at the time he sustained the injury and the court awarded him compensation. So that, it is a matter which, strictly speaking, comes within the definition. It must be a disfigurement which will affect the capacity of a person for work or to obtain work. To argue that, if a workman while carrying on work sustains some injury as a result of which the beauty of his complexion is marred, he must be given something by way of compensation can not be accepted. The test is whether an injury has affected his capacity to earn, and not whether the beauty of his complexion has been destroyed or lessened. As we are legislating only for workmen and not for anyone's beauty, the test for compensation depends on whether his capacity for work has been diminished. If so it comes within the definition of disablement. Therefore I think there is no meaning in adding to the schedule the expressions indicated in the amendment.

MR. E. SUBRAMONIA AIYAR : Sir, it is not my contention that a disfigurement may not reduce a workman's capacity. I grant that it will do so. The Bill as it stands does not include disfigurement. The Bill provides for two cases *viz.*, partial disablement and total disablement; and in a case of disfigurement the question will always be whether in an individual case, the alleged disfigurement will amount to disablement, partial or total. In the definition "partial disablement" means;

> " Where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and where the disablement is of permanent nature. such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time ; provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement.'

In Schedule I, of course, there is a list of injuries that is deemed to result in permanent partial disablement. When the injury complained of is one specifically mentioned in Schedule I, no further proof is required of the fact whether it would amount to a disablement entitling the workman to compensation. If you add permanent disfigurement to the list of injuries mentioned in Schedule I, the usefulness of the Schedule will be affected. Permanent disfigurement will never amount to total disablement. Again, the question will arise whether a disfigurement in a case under consideration is a permanent one or not. That will be greatly a matter of expert opinion. The certainty aimed at by Schedule I will disappear.

Again, a temporary disfigurement may also reduce the capacity of a labourer to earn work. I doubt whether it is competent to treat it as a matter fit for awarding compensation. The Bill does not exclude

disfigurement as an injury which will reduce the earning capacity of a workman. Disfigurement may also amount to total disablement. When a person comes forward and says that by reason of disfigurement, his earning capacity was reduced, the court will have to determine the question as a fact. In other cases mentioned in Schedule I, there is no burden of proof on the worker. The question really for consideration is whether we should introduce disfigurement in Schedule I. The Bill has not excluded disfigurement from the category of circumstances which will enable a disabled worker to earn. If we introduce it in Schedule I, a permanent disfigurement will bring a partial disablement; but cases may occur where such a disfigurement may amount to total disablement. Cases may also occur when the disfigurement may be so trivial that it may not amount to disablement at all. That is my view of the matter.

SRIMATI C. O. PONNAMMA: I beg to withdraw the amendment.

The amendment was, by leave of the House, withdrawn.

The question that Schedule I form part of the bill was then put to vote and carried.

Schedule I was added to the bill.

SCHEDULE II.

The question that Schedule II do form part of the bill was then put to vote and carried.

Schedule II was added to the Bill.

SCHEDULE III.

The question that Schedule III do form part of the bill was next put to vote and carried.

The Schedule III was added to the bill.

SCHEDULE IV.

The question that Schedule IV do form part of the bill was put to vote and carried.

Schenule IV was added to the bill.

PREAMBLE.

The question that the Preamble do form part of the Bill was then put to vote and carried.

The Preamble was added to the Bill.

TITLE.

The question that the Title do form part of the Bill was then put to vote and carried,

The Title was added to the bill.

MR. PUTHUPALLY S. KRISHNA PILLAI: No amendment has been made in the bill as revised by the Select Committee. I beg to move that the bill be passed.

MR. C. V. CHANDRASEKHARAN: I second it

The motion was put to vote and carried

The bill was passed.

CIVIL PROCEDURE CODE AMENDMENT BILL.

MR PUTHUPALLY S. KRISHNA PILLAI: I beg to present the Rules to amend the Schedules and the Forms to the Civil Procedure Code proposed by the Rule Making Committee and approved by the High Court and duly published in the Gazette for the consideration of the House. Under Section 94 of the Civil Procedure Code, this is directed to be treated and dealt with as a bill submitted with the report of the Select Committee. I therefore move that the Civil Procedure Code Amendment Bill be considered.

MR. T. P. VELAYUDHAN PILLAI: Under Standing Order 41, I object to the consideration of the Bill. It says that the copy of the Rules must be made available to the members before seven clear days of the meeting. Some of us got it only to-day; and some others got it only yesterday.

PRESIDENT: Is it the opinion of the member that some more time is wanted for the consideration of the question? If so it is a matter entirely for the House to decide.

MR. T. P. VELAYUDHAN PILLAI: There is another difficulty also According to the Standing Orders under Section 42 we are entitled to send amendments which should be sent before six clear days of the meeting.

MR. PUTHUPALLY S. KRISHNA PILLAI: I understand that copies of the Gazette have been sent to all the members in time. The bill was published in the Gazette for the information of the members as well. If the honourable members want further time to submit amendments I think that question may be considered. I have no objection to granting time. It is in the discretion of the Chair.

MR. T. P. VELAYUDHAN PILLAI: The publication of the bill was in the Gazette dated 28th January 1939.

MR. PUTHUPALLY S. KRISHNA PILLAI: That means the copy of the Rules was made available 11 days before the meeting.

MR. PUTHUPALLI S. KRISHNA PILLAI: This is governed by a special rule contained in the Civil Procedure Code.

PRESIDENT: I take it that the Civil Procedure Code provides that certain rules should be framed; and the High Court has got certain functions to discharge in regard to that matter. In order that this House may bestow its attention on these rules and make suggestions, it has been provided that what has been done by the High Court should be regarded as a bill revised and reported by the Select Committee and brought before the House. Therefore, there is no point in taking our minds back to the period of, what may be called, the original publication of the Bill. But, at the same time, I do not stand on technicalities. If this honourable House wishes to consider those rules at leisure, I shall suspend the business and postpone the consideration for tomorrow. Members may put forward amendments then. I take it that that is generally agreed to.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to introduce the Travancore Markets Regulation (Amendment) Bill. In the statement of objects and reasons it has been pointed out that the object of this amendment is to delegate the power of hearing appeals in market cases, decided by the Division Peishkars, to the Land Revenue Commissioner. A reading of the amended section 28 would clearly show what the amendment is and how it would affect the present practice. "(1) An appeal shall lie to the Land Revenue and Income Tax Commissioner from any order of a Division Peishkar passed under this Regulation. (2) Our Government may direct that an appeal from the order of any officer empowered under Section 27 shall lie to the Division Peishkar. (3) There shall be no appeal from the decision or order passed in appeal by the Land Revenue and Income Tax Commissioner or by the Division Peishkar. (4) It shall be lawful for the Dewan to revise any decision or order passed by any subordinate officer under this Regulation." Under this scheme, as in other matters, such as the Land Assignment Regulation, Land Conservancy Regulation and the Revenue Recovery Regulation, it is proposed that there shall be an appeal to the Land Revenue and Income Tax Commissioner against the decision of the Division Peishkars. Appeals which are now prepared to the Dewan will have to be prepared to the Land Revenue and Income Tax Commissioner. This Bill provides power for the Dewan to revise any decis on of the Tahsildar, the Division Peishkar or the Land Revenue Commissioner. At the time the Markets Regulation was introduced there was no officer of the Status of the Land Revenue and Income Tax Commissioner, After the Markets Regulation came into force such an officer was appointed and he has since been invested with appellate powers in various matters. I am quite sure that that power exercised by the Land Revenue Commissioner has given complete satisfaction to the people. Government are satisfied that this power of hearing appeals under the Markets Regulation may be delegated to him especially in view of the fact that he will be the person most competent to dispose of those matters most expeditiously. There have been cases in which parties have appeared before the Dewan and urged for local inspection. But owing to want of time and due to pressure of work the Dewan has not always been able to go out on circuit and inspect the localities, There are practical difficulties also in the matter of settling questions relating to the title to, identify of and distance between one property and another involved in such cases. For such matters the best person who is most competent is the Land Revenue and Income Tax Commissioner. If it is a case in which he thinks that local inspection would disclose that the decision of the Division Peishkar was not just the matter can be attended to by him forthwith. He is a circuiting officer The Division Peishkars and the Tahsildars are directly under the Commissioner and a large portion of their work under the Markets Regulation is being subjected to scrutiny even at

[Mr. Puthupally Krishna Pillai.]

present. There are these distinct advantages to the people concerned in the proposed scheme. The Dewan's work will to a small extent be lightened. These are the main reasons which have prompted me in bringing forward this Bill. I, therefore, move that the Bill be read in the Assembly.

MR. C. V. CHANDRASEKHARAN (*Pro Vice Chancellor*): I second it.

The motion was put and carried.

TITLE OF THE BILL.

SECRETARY: The title of the Bill shall be the Travancore Markets Regulation (Amendment) Bill.

SECOND READING OF THE BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Honourable members have given me sufficient encouragement in this respect by not expressing even a single dissentient voice. I therefore beg you, Sir, to suspend the standing order so that I may move that the Bill be considered.

PRESIDENT: I suspend the standing order,

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that the Travancore Markets Regulation (Amendment) Bill be considered.

MR. C. V. CHANDRASEKHARAN: I heartily second it.

Clauses 1 and 2.

The question that clauses 1 and 2 do form part of the Bill was put and carried.

The clauses were added to the Bill.

Preamble

The question that the preamble do form part of the Bill was put and carried.

The preamble was added to the Bill.

Title.

The question that the title do form part of the Bill was put and carried.

The title was added to the Bill.

THIRD READING OF THE BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that, after inserting the figure "4" after the figures "111", in clause (i), the Bill be passed,

MR. C. V. CHANDRASEKHARAN: I second it.

The motion was put and carried.

MR. PUTHUPALLY S. KRISHNA PILLAI : Sir. I beg to introduce the Bill to amend the Travancore Village Panchayat Courts Regulation. The statement of objects and reasons will show that this amendment is proposed for a very small administrative purpose. 'The institution-fee leviable under Section 76 of the Village Panchayat Courts Regulation, is five per cent. of the value of the suit instituted. This five per cent. *ad valorem* fee when worked out, results in very small amounts in cash and sometimes fraction of a cash. The proposed amendment to Section 76 (made on the recommendation of the High Court) prescribes a minimum fee of one chuckram to be levied in such cases." I move that the Bill be read in the Assembly.

MR. C. V. CHANDRASEKHARAN: I second it.

The motion was put and carried.

TITLE OF THE BILL.

SECRETARY: The title of the Bill is the Travancore Village Panchayat Courts Regulation (Amendment) Bill.

SECOND READING OF THE BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI : I beg to move that the standing order be suspended and I may be permitted to move for the consideration of the Bill.

MR. C. V. CHANDRASEKHARAN : I second it.

PRESIDENT : The standing order is suspended.

MR. PUTHUPALLY S. KRISHNA PILLAI : I move that the Village Panchayat Courts Regulation (Amendment) Bill be now considered.

MR. C. V. CHANDRASEKHARAN : I second it.

Clauses 1 and 2.

The question that clauses 1 and 2 do stand part of the bill was then put to the vote of the House and passed.

Clauses 1 and 2 were added on to the Bill.

Preamble.

The question that the preamble do stand part of the Bill was then put to the vote of the House and passed.

The Preamble was added to the Bill.

Title

The question that the title do stand part of the Bill was then put to the vote of the House and passed.

The title was added to the Bill.

THE TRAVANCORE REVENUE SUMMONS REGULATION AMENDMENT BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to introduce the bill to amend the Travancore Revenue Summons Regulation. The object of this amendment is explained in the statement of objects and reasons. But I may be permitted to state only one word in support of this Bill. Sir, there appears to be an omission in the Regulation as it stands at present. It does not contain any provision directing as to how a process has to be served if a person refuses to accept summons, or the adult member of the family in the absence of the person refuses to accept a process. If a person evades the service of a process no provision is made so as to give legal sanctity for affixture and return. The absence of such a provision in the Regulation has been the cause of very many administrative difficulties. The Dewan Peishkars and the Land Revenue Commissioner have complained that owing to the absence of such a provision in the Regulation various difficulties are experienced. In order to regularise the existing practice in the matter of serving processes the present proposal is made. The revenue process servers now serve the process on such occasions by throwing the summons in front of him and recording [illegible] നടത്തി but there is no legal sanction attaching to this kind of service. Hence the amendment. I beg to move that the bill be read in the Assembly.

MR. KOTTALIL P. ABRAHAM: Has the Legal Remembrancer any objection in deleting this provision and in bringing it in line with the corresponding provision in the Civil Procedure Code?

MR. PUTHUPALLY S. KRISHNA PILLAI: The provision contained in the Civil Procedure Code as it stands is very cumbersome and elaborate. But here what is needed is a provision for service if the person to whom the summons is sent refuses to accept it so that such service may be a due service. There is a provision even now for the service of summons on persons who cannot be found. But there is no provision where a person is found but refuses to accept a summons. But according to the Civil Procedure Code if a person refuses to accept summons the service is legalised by the provision for a certificate that it has been so done.

MR. K P. KOCHUKORATHARAKAN: കക്ഷിക്ക സമൻസ് ഒപ്പിടാൻ മനസ്സില്ലാ എന്നു പറയുന്നു എന്നു രണ്ടു സാക്ഷിയും വെച്ചു സമൻസു മടക്കുന്നതോ?

MR. PUTHUPALLI S. KRISHNA PILLAI: Now the Revenue Summons Regulation does not contain any provision as to what ought to be done if a person refuses to accept the summons. If a process peon says that it has not been accepted there is no legal sanctity attaching to such a report. When the law was framed the necessity for this contingency was not contemplated. But times have changed.

MR. K. P. KOCHUKORATHARAKAN: അഞ്ചൽവഴി അയച്ചുകൊടുക്കാമല്ലോ.

MR. PUTHUPALLI S. KRISHNA PILLAI: It is a personal service that ought to be resorted to. It is a service through a responsible officer of the Revenue Department and that service ought to be effected. In case a person cannot be found it may be possible to send it through Anchal. But if I take a summons to Mr. Abraham and if he refuses to accept it what should I do? I must make a written statement that Mr. Abraham has refused to accept. All officers who are entrusted with this work are presumed to be honest and truthful. If they make false statements they are punishable under law. If the summons is taken to Mr. Abraham and if he is absent and the process peon can make a report that he has affixed the summons on the door of Mr. Abraham's house, the service will have the legal sanctity because there is express provision. The attempt is to give legal authority to do that which is now done and to legalise the only course that can be adopted.

MR. K. P. KOCHUKORATHARAKAN: എട്ടുരൂപാ ശമ്പളക്കാരായ ഇവൎക്ക ബോധിച്ചപോലെ എഴുതിക്കൊണ്ടുപോകാൻ സാധിക്കുകയില്ലേ?

MR. PUTHUPALLI S. KRISHNA PILLAI: There is a presumption in favour of the regularity of official proceedings. This service is effected under a statute. Any infraction of the statutory provision is met with punishment. There may be dishonest Process servers but it is not peculiar to the Revenue Department.

MR. K. P. KOCHUKORATHARAKAN: കുറഞ്ഞ ശമ്പളക്കാരായ ഇവർ നീരസമുള്ളവരുടെ പേരിൽ വെറുതേയും റിപ്പോർട്ടു ചെയ്യുന്നതിന് ഇടയാകുകയില്ലേ?

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, there does not appear to be much force in this question. Why should the Proverthikar make a false report when an easier course is open to him. He can report that the person was not found when enquired about and that he tried to get at him on such and such dates but failed and so the summons had been affixed to his house. The summons is then duly served, When that course is available why should he state falsely that when it was taken to him he refused to accept. The amendment does not therefore worsen the present position.

MR. M. SIVATHANU PILLAI: May I know how this omission was found to be defective in appeal cases?

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, the Revenue Summons Regulation has nothing to do with appeal cases. In appeal cases if a person refuses to accept summons he is penalised by deciding the case against him. Under this Regulation no such thing is contemplated.

MR. M. SIVATHANU PILLAI: Cannot the peons who serve summons in appeal cases affix the summons to the door if the person refuses to accept summons?

MR. PUTHUPALLI S. KRISHNA PILLAI: That is exactly what is wanted here.

MR. M. SIVATHANU PILLAI: It is not a minor detail that can be left over?

MR. PUTHUPALLI S KRISHNA PILLAI: When there is not a statutory provision for that purpose there is difficulty in enforcing attendance of witnesses. In order that the report can be accepted and acted upon a definite provision should be made in the Regulation for that purpose.

PRESIDENT: The provision is all the more necessary when the refusal is definite.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir.

MR. S. CHATTANATHA KARAYALAR: Has any difficulty been felt on account of the absence of such a provision?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes. Various difficulties have been felt.

MR. C. V. CHANDRASEKHARAN: I second the motion.

MR. E. SUBRAMONIA AIYAR: This is only by way of superabundant caution. So far as the old Regulation went, it was enacted that if the person could not be found the affixture must be made by the process server. If the process server meets the person who is to be summoned and if he does not accept, the affixture is not going to improve matters. The affixture was introduced because if the person is living there, certainly he could not at a later stage come and say that he had not known of it. Otherwise, it would be open to him to contend that the summons was not taken to him at all. The process sever will swear that it was taken. The affixture is a secondary method. In the matter of service of summons, as far as possible, the endeavour is to see that no order is passed prejudicing the man without giving him an opportunity to be heard. So, if he accepts the summons well and good, but in the case of those who do not accept, the Legislature at that time, thought that the process might be affixed. Then some time or other he would come to know of it. There is no magic in personal service. The idea is that the person against whom some procedure is taken must be given previous intimation of it. In whatever form it is given, it is immaterial. If personal service cannot be had, adopt a method which will bring notice to him; and so the notice is affixed. But in the case of refusal it might be that even the affixture is unnecessary. The report of the server is enough. The man, if he pleads that he did not refuse, at any rate, there was the other method of service.

I do not think there is any matter of principle in this. It is only adding a further provision to say that so far as possible even revenue proceedings might be taken without giving sufficient opportunity, to the person affected, for appearing. This only makes it difficult for him to say later on that he had no notice of this proceedings. It does not bring any inconvenience. It will throw some additional work on the process server. That is all.

MR. K. P. KOCHUKORATHARAKAN : ഈ സെക്ഷനിൽ എന്തുമാററമാണു വരുത്താനുള്ളതു് എന്നു ഒരു സിലക്ട കമ്മിററിക്കു അയച്ചു തീരുമാനം വരുത്തുകയാണു് ചെയ്യേണ്ടതു്. അങ്ങിനെ ചെയ്യില്ലെങ്കിൽ എത്ര പ്രൗഢനായാലും ഈ ഏഴുരൂപാ ശമ്പളക്കാരന്റെ റിപ്പോർട്ടു കൊണ്ടു പിഴ ഒടുക്കാതിരിക്കാൻ സാധിക്കുന്നതല്ല. പുറമ്പോക്കു കേസുകളോ മററൊ ഉണ്ടായിൽ കക്ഷിയെ നോട്ടീസ് കാണിക്കാതെ നോട്ടീസിന്റെ നാലു മൂലയും കീറിക്കളഞ്ഞു റിപ്പോർട്ടു ചെയ്താൽ പിഴ വന്നതിന്മേൽ മാത്രമെ കക്ഷി സംഗതി മനസ്സിലാക്കുന്നുള്ളു. അങ്ങിനെ പല കേസുകളും എനിക്കറിയാം. അതുകൊണ്ടു ഇങ്ങിനെയൊരു അമെൻറുമെൻറു വരുത്താൻ പാടുള്ളതല്ല. ഒരു സിലക്ട കമ്മിററിക്കു അയച്ചു വേണ്ട തീരുമാനം വരുത്തുകയാണു വേണ്ടതു്.

PRESIDENT: The motion before the House is that the Bill be read in the Assembly.

The motion was put to vote and carried.

TITLE OF THE BILL.

The Secretary then read the title of the Bill as "The Travancore Revenue Summons Regulation Amendment Bill."

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I thought it was a Bill which would not provoke any kind of opposition or criticism from any honourable member of this House. Therefore, I originally thought I need not refer this Bill to any Select Committee. I think I shall have to refer it to a Select Committee.

PRESIDENT: That is for you to decide.

MR. PUTHUPALLI S. KRISHNA PILLAI: I may be permitted to think over the matter.

PRESIDENT: Then the best plan will be to refer the Bill to a Select Committee.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir. I beg to move that the Bill to amend the Revenue Summons Regulation be referred to a Select Committee consisting of Messrs. E. Subramonia Aiyar, M. L. D'Cruz, S. Chattanatha Karayalar, T. P. Velayudhan Pillai and myself.

PRESIDENT: What about Mr. K. P. Kochukora Tharakan?

MR. PUTHUPALLI S. KRISHNA PILLAI Yes. Mr. K. P. Kochukora Tharakan may also be included. The Select Committee shall submit their report before tomorrow noon.

MR. C. V. CHANDRASEKHARAN: I second it.

PRESIDENT: The question before the House is whether the Bill be referred to the Select Committee.

The motion was put to vote and carried.

THE TRAVANCORE INSURANCE BILL

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I beg to introduce the Travancore Insurance Bill. In introducing this Bill, I may be permitted to make a few observations with regard to its salient features.

The existing law relating to insurance is comprised in two enactments, the Life Insurance Companies Regulation and the Provident Insurance Companies Regulation. The first deals with major insurance and the second with provident insurance. Honourable members who were members of the Legislative Council when the Provident Insurance Societies Regulation was discussed and passed might remember the immediate necessity which was felt at that time for making the provisions of that regulation very stringent in regard to one matter, that is, of compelling all provident insurance societies, all persons carrying on provident insurance business, to make a deposit of a sum not exceeding Rs. 50,000. That was a novel provision contained in our regulation and there was nothing corresponding to that in British India. Now, after five years or so, the British Indian Legislature thought that there was much truth in what was said here about these provident insurance companies and they therefore considered the question of compelling the deposit in the case of the provident insurance societies, and adopted a provision which we had adopted some five years ago. They have proposed a sum of Rs. 50,000 as the deposit but we have found that the provision to compel these societies to deposit fifty thousand rupees was too much and to be within the limit of the pecuniary means of our people, it was thought expedient that the sum of fifty thousand rupees might be reduced to twenty five thousand. That is the provision which is in operation. In regard to the provident insurance societies we are in a much better position than British India. They have started legislating for making these companies deposit. It is six years since we have enacted this piece of legislation, and we have brought under control all the provident insurance societies working in the State. The considered opinion of all business men is that insurance business on the dividing system is highly unscientific. They have therefore decided that insurance business on the dividing system should be prohibited whether it be major insurance companies or provident insurance companies. This is the marked feature of the present Bill. We are going to propose that no insurance business whether of the provident or of the major insurance type shall be carried on the dividing system. It is to be prohibited and penalised.

The next important provision which appears to be necessary, relates to the deposit in the case of major insurance. Whereas we have provided that in the case of all provident insurance companies carrying on insurance business, which as honourable members know is only for small amounts...........

PRESIDENT: Mr. Narayana Kurup will move the adjournment motion.

ADJOURNMENT MOTION.

All Travancore Students' Federation.

MR. N. NARAYANA KURUP: Sir, I move that the business of the House be adjourned for the purpose of discussing a definite matter of urgent public importance, namely the deep sense of public dissatisfaction at suppressing the legitimate and elementary right of association of young people of schools and colleges into a federation, ban imposed on them by the education authorities and by the arrest and imprisonment of the President and Secretary of the Federation.

As we all know, Sir, the All Travancore Students' Federation, was started at a time of very great political fervour and unrest in our State. Some of the students in certain colleges and schools were assaulted by the police on certain imaginary reasons and some of them were also punished by the educational authorities on the allegation that they expressed their views on live political matters. Therefore, the students thought that their privileges and certain rights were curtailed by the State and the educational authorities. They thought it also desirable to organise themselves into a federation, as we find in other civilised lands, to establish their rights; and the federation was started.

Even though the Government had the power to declare any association as disloyal and subversive at that time, they did not declare this federation as disloyal and subversive. Yet the educational authorities, who used to encourage, help and insist on the students to associate and discuss on live questions of public interest, for the formation of character and development of debating power, imposed a ban on the Students' Federation by saying advising and commanding that no student should join the said Federation. The said illegal ban strengthened the organisation and regular propaganda was going on. It was at that time that the President and the Secretary of the Federation were arrested under some pretext or other. This method of suppression of the legitimate right of association of students has caused very great public dissatisfaction.

Sir, I am one of those who endorse every word of ripe educationists like the Right Honourable V. S. Srinivasa Sastri, Dr. C. R. Reddy and other eminent Indian leaders such as Mahatmaji and Pandit Jawharilal Nehru, that active participation of students in politics is baneful to their progress and in most cases will do lasting harm. But that does not mean that we should take away their legitimate right of association study and discussion of current political problems. I believe that they have every right to express their opinion on current politics one way or the other. Even in England, when Irish Home Rule and the question of women's vote were live political questions, the students were allowed to discuss and form their opinion, in the Oxford and Cambridge Unions. That, at any rate, did not lead to the downfall of the British Empire.

PRESIDENT: Does the honourable member mean to suggest that in England or in any other country in Europe, any student was ever allowed to address any public meeting, or even to be present at a public meeting where politics was being discussed?

MR. N. NARAYANA KURUP: All that I am able to say is that the students were not denied that privilege; and they were allowed to discuss political questions in the Oxford and Cambridge Unions.

Certainly Sir, the ban is very unfortunate as it synchronises with the foundation of our University. One thought, naturally the University Act was in a certain sense, a charter of liberties to young people within certain limits. But the action of the Government and the educational authorities gives the lie to that hope.

The ban has made the situation worse. I am reminded of the old Biblical story of the forbidden fruit. There is always that tendency in human nature to do what is forbidden, if it does not affect the purse or person. If only Satan had asked innocent Adam to pluck the tempting fruit, the chances were that he would never have left a legacy of sins Young people when they were forbidden to meet into a Federation, infringed that rule. Thus the ban has affected their character and discipline. There is no use of complaining that the discipline has gone, after having worked for it.

Sir, I am afraid that this ban is fraught with very great future. If young people grow up in an atmosphere in which they have no faith in the impartiality of their teachers and in the sense of justice of the Government of the land—that becomes the seed—bed of real revolution. Experience of Russia, Turkey and Egypt may make us wiser.

I therefore bring to the notice of this House that there is considerable public dissatisfaction at the suppression of the rights and privileges of students in our State and that the Students Federation may be recognised. With these words I move the motion for the acceptence of this House.

MR. KAINIKARA M. PADMANABHA PILLAI: May I know from the honourable member the nature of the ban which he seeks to be moved, and its author.

MR. N. NARAYANA KURUP: I am not in a position to answer the question, Sir.

MR. KAINIKARA M. PADMANABHA PILLAI: Has any such ban, as has been referred to by the honourable member, been imposed on anybody? We want that information before we discuss this motion further.

PRESIDENT: The honourable member is entitled to ask that question; but the other honourable member is not bound to reply.

MR. K. G. KUNJUKRISHNA PILLAI: At least the Government can tell us whether there is such a ban, so that we may know on what basis we have to proceed with the discussion.

MR. KAINIKARA M. PADMANABHA PILLAI: We would request the President to ask the Government Benches to enlighten us on the point.

PRESIDENT: The motion before the House is to discuss a definite matter of urgent public importance, namely, the deep sense of public

dissatisfaction, at suppressing the legitimate and elementary right of association of young people into a federation. I presume that the honourable member who moved the motion is suffering from *that* "deep sense of dissatisfaction", I also presume that he has enlightened the House as far as he could. If he has, the House is in a state of enlightenment; if he has not, it is in a state of non-enlightenment. That is the position.

MR. M. SIVATHANU PILLAI: Are we to take it that the mover has nothing to offer by way of enlightenment?

PRESIDENT: I shall not allow the honourable member to cross-examine the mover. It is open to them to say that, notwithstanding the efforts of the mover, the point has not been elucidated.

I shall anyhow call upon Mr. Chandrasekaran to tell you something about it.

MR. M. SIVATHANU PILLAI: Can I not put a question to the mover of the adjournment motion?

PRESIDENT: Oh, yes.

MR. M. SIVATHANU PILLAI: I would like to know from the mover whether there is any ban; if so the nature of such ban and the author of it.

MR. N. NARAYANA KURUP: In reply to that question I may say that the educational authorities of the State are the best authorities to answer that question.

MR. M. SIVATHANU PILLAI: I would like to have full details about the ban referred to by the mover, so that we can participate in the discussion.

MR. C. V. CHANDRASEKHARAN: Sir, about three months ago, an application was received in our University office, which requested that an organisation which was called the All-Travancore Students' Federation might be recognised by the University. We called for details regarding the constitution of that Federation, its membership, its rules and proposed activities. We received a printed pamphlet from which it was seen that it was contemplated as an organisation for both college and school students. We also noted that the person elected as President of the Federation was not a student at all, rather, he had been expelled from the College and his case had been reported to the Madras University for action by that University.

At a meeting of the Syndicate of the Travancore University, the question of the recognition of this 'All-Travancore Students' Federation' was considered. The honourable member Mr. Kainikara Padmanabha Pillai is a member of our Syndicate, and Mr. Govindan, a member of the State Council, is also a member of our Syndicate. Both these public men were present at that meeting of the Syndicate at which, after very careful consideration, the following resolution was passed:

[Mr. C. V. Chandrasekharan.]

"Resolved that, having regard to the fact that, under the rules of the Federation, membership is not confined to University students but is open to non-students and to pupils of schools, and having regard also to the activities and utterances of the office-bearers of the association, the Syndicate is of the opinion that this association is not conducive to the interests and welfare of students, and regrets therefore that the recognition sought cannot be granted".

The House will readily agree that this is a very mild, a very moderate action on the part of the Syndicate. No disciplinary action was proposed; no penalties were threatened. The resolution was in the form of advice to the students.

Sir, when this resolution was communicated to the heads of colleges and other educational institutions, they were requested not to resort to disciplinary action immediately but to advise the students to keep away from this Federation, to resign from it if they had already joined it. The University did not propose immediately to take any strong disciplinary action; they desired to wait and see what the nature of the activities of the Federation were going to be.

As I said, Sir, the person who was put forward by this organisation as its President was a student who had been expelled from the College of Arts for various offences, offences of a very grave character. In the class room he shouted all kinds of objectionable political slogans; and when the Principal suspended him until further orders he rushed into other classes, harangued the students there and asked them to come out with him. He circulated chits to the students, written in his own handwriting, asking them to go to their classes but not to answer the roll-call or take notes, but to non-co-operate with the lecturers. As I said, he was guilty of very serious breaches of disciplinary rules. Naturally, he was expelled. Sir, it was such a person that was elected as the President of this Federation.

Subsequently, this President enlightened us on the objects of the Federation. He said that the main objects of the Federation were—this has appeared in the Madras Mail—"to crush the Travancore University which was bound to have no status among the other Universities in India, and to plead for a reduction of school and college fees"

It is rather an anti-climax; because, if he succeeded in crushing the University, the question of fees or its reduction would not arise at all. Sir, to be fair to Mr. Basheer Mahomed, he subsequently published a statement in the Malayali and some other papers contradicting what I just now read and stating that he did not say anything like that. But the fact remains that he was expelled from the College; and his case is now before the Madras University.

The pamphlet which we received from this Federation has defined the term 'student' under the constitution of the Federation. This is the definition :—

"'Student' shall mean and include any one (*a*) who is on the rolls of an educational institution (*b*) though having left an educational institution but not more than two years and not having entered into or accepted any specific job or office".

It may be noted that the definition is so framed as to qualify ex-students, and Mr. Basheer in particular, for membership.

Sir, Mr. Narayana Kurup condemns the obscurantism of the Travancore University in having banned the Travancore Students' Federation. I have explained what action was really taken by the Syndicate. Neither the University nor the Government will frown upon a well-organised Federation of University students; because, I feel, as the person in charge of the University, that we are considerably handicapped for lack of a sound organisation which will represent the students, which will stand for their interests, which will promote their welfare. It is easier for the University to deal with students when they have got a sound well-organised body to represent their interests, to voice their opinion. But this Federation is neither fish, nor fowl, nor good red-herring. Sir, to compare the All-Travancore Students' Federation with the Oxford University Union is to compare London to Paddington. The All-Travancore Students' Federation includes a large number of rather excitable school boys. It is obvious that school boys cannot be treated on the same footing as University students. The whole problem of discipline so far as school boys are concerned is entirely different from that of University students. School boys cannot claim the same facilities, the same rights and privileges, as the more mature University students.

To be quite frank about it, Sir, I must say that the University authorities view this so-called Federation with considerable suspicion and distrust; and in proof of this I may mention another important fact.

About a month ago, the representatives of the Federation applied to the Vice-Chancellor and requested that they may be received on deputation. The Vice-Chancellor received them and discussed the matter with them at very great length, and he told them that so far as their own societies and their own students' organizations were concerned they could not only discuss responsible government but they could discuss communism and bolshevism. But active politics and political agitation and demonstration are different matters. They could not have one foot in the College and one foot in political agitation; they could not both be students and political agitators, that study and political agitation were two different things, that if they wanted to be political agitators they must leave the college, that they cannot one day be students and the next day be political agitators. He gave them the assurance that provided they gave an undertaking that they would not take part in political agitation, and that they would not furnish volunteers for the State Congress movement, he was perfectly willing to reconsider the whole matter and see that the Federation was recognised and put on a sound basis. The deputation offered to consider the matter and went away. Nothing more has been heard.

PRESIDENT: It must be added that the deputation agreed with the Vice-Chancellor and promised a reply in terms of the agreement.

MR. C. V. CHANDRASEKHARAN: Well, Sir, that information is more complete and more accurate; I thank you for furnishing it. As a result of their discussion with the Vice-Chancellor they promised to give an undertaking; but nothing more was heard about the whole thing.

Sir, no responsible political leader would advocate the participation of students in political agitation. Not only Mahatma Gandhi but Jawaharlal Nehru, Subhas Chandra Bose and other fire-eating politicians have all condemned the exploitation of students for political purposes. And I am glad to find that there is a very strong revulsion amongst the students themselves.

MR. K. NARAYANAPERUMAL NADAR: May I know whether the member is aware that Mr. K. T. Bhashyam and Mr. Sarat Chandra Bose stated that students can take active part in politics?

MR. C. V. CHANDRASEKHARAN: I am not aware, nor do I attach importance to it even if it were true. So far as the outstanding leaders are concerned, they have all condemned it; and Mahatma Gandhi issued a statement particularly for the benefit of Travancore students at the time when the disturbances were going on. I am glad to find that there is a very strong revulsion amongst the students themselves against the way in which they had been exploited for political purposes. There is among them a feeling that they have been acting unwisely; and it is hoped that that feeling will be a sustained one. I would only entreat the honourable members of this House to use their influence to guide the students along the right path.

MR. K. R. NARAYANAN: രാഷ്ട്രീയകാര്യങ്ങളിൽ ഇടപെടരുതെന്ന് ഇവിടത്തെ നേതാക്കന്മാർ വിദ്യാർത്ഥികളെ പ്രേരിപ്പിച്ചിട്ടുള്ളതായി അറിയാമോ?

MR. C. V. CHANDRASEKHARAN: I have no definite knowledge that the particular leader called out the students definitely in the open platform or otherwise. But there have been cases in which political leaders and would-be heroes like Basheer Mohmed have been going about arm in arm and getting photographed. I know of an occasion when Basheer was welcomed after his release from jail and when political leaders presided over the meeting and sang his hallelujah and said what a wonderful hero he had become. There have been other cases where some State Congress leaders have been courting the students in various ways.

MR. K. R. NARAYANAN: നേതാക്കന്മാരും വിദ്യാർത്ഥികളും ഒരുമിച്ചിരുന്നു ഫോട്ടോഎടുത്തു എന്നുള്ള കാരണത്താൽ മാത്രം നേതാക്കന്മാർ അവരെ പ്രേരിപ്പിച്ചു എന്നു പറയുന്നതു ശരിയാണോ?

MR. C. V. CHANDRASEKHARAN: Sir, I am not able to understand his question.

PRESIDENT: The question is about the degree of intimacy and political association involved in joint photography.

MR. C. V. CHANDRASEKHARAN: That is a matter of opinion, Sir. But it is a fact that a State Congress leader did preside over a meeting for giving a reception to Mohmed Basheer; and he spoke in glowing terms of his conduct and so on.

MR. K. R. NARAYANAN: തമ്പാനൂർ റെയിൽവേസ്റ്റേഷനിൽ വച്ച് നടന്ന മഹായോഗത്തിൽ വച്ച് വിദ്യാർത്ഥികൾ രാഷ്ട്രീയകാര്യങ്ങളിൽ ഉൾപ്പെടരുതെന്നു മി. ജി. രാമചന്ദ്രനും മററും പ്രത്യേകം പ്രസംഗിച്ചിട്ടുള്ളതായി അറിയാമോ?

MR. C. V. CHANDRASEKHARAN: I do not deny that certain political leaders have issued pamphlets advising the students against taking part in active politics. But there are other indications also in the contrary sense, and each member must be free to form his own opinion in such matters when there are facts on both sides.

MR. K. R. NARAYANAN: എന്റെ സാന്നിദ്ധ്യത്തിൽ വച്ചു സ്റ്റേററ് കാൺഗ്രസ്സിലെ പ്രധാനികളായ രണ്ടു പേർ ൧൦-ൽ പരം വിദ്യാർത്ഥികളോട് രാഷ്ട്രീയകാര്യങ്ങളിൽ ഇടപെടരുതെന്നു ഉപദേശിച്ചിട്ടുള്ളതായി അറിയാമോ?

MR. C. V. CHANDRASEKHARAN. He is harping on the same point, Sir. As I have said, there is some evidence on the one side that the State Congress leaders do not desire that students should take part in politics; and on the other hand there is stronger evidence, that, publicly or otherwise, State Congress leaders have been cheering students and patting them on the back and showing in various kinds of ways that they appreciate the help which the students are giving them. It is a matter of weighing of evidence on both sides.

Well, Sir, I have really very little more to say. Let me make it clear to Mr. Narayana Kurup that we are not opposed to students' organisation as such. As I said, it is very necessary that university students should have a very sound and proper organisation; and the university authorities themselves will assist the students in forming a sound organisation based on legitimate aims and carrying forward those aims by means of legitimate activities.

MR. N. NARAYANA KURUP: May I know from the honourable member whether the Syndicate has informed the conveners of the Students' Federation that if certain defects are cured sanction would be accorded to that organisation?

MR. C. V. CHANDRASEKHARAN: It is their concern, Sir. The resolution was forwarded to the Secretary of the Federation. If they are keen about their Federation being recognised by the University, it is up to them to cure the defects and come to us again.

MR. K. NARAYANAPERUMAL NADAR : Sir, I support the resolution. To me it appears that the whole question is whether students can take active part in politics or whether they can be penalised if they take active part in politics. Mr. K. T. Bhashyam in one of his speeches in Mysore, in connection with the State Students' Conference, said, referring to the question of students' and politics, as follows.

PRESIDENT : Who is Mr. Bhashyam?

MR. C. V. CHANDRASEKHARAN : He is coming here to preside over the All-Travancore Students Federation.

MR. K. NARAYANAPERUMAL NADAR : "Whenever the country is peaceful, it is well for students not to take active part in politics."

PRESIDENT : Order, order. Is Mr. K. T. Bhashyam an authority on education, or does the honourable member adopt his language as his own?

MR. K. NARAYANAPERUMAL NADAR : This is a quotation from his speech, Sir............

PRESIDENT : Which means that the honourable member is reading it as his own sentiment; because generally quotations are made from persons who are regarded as authorities on certain subjects. Otherwise, the honourable member who makes the quotation embodies it as his own sentiment.

MR. K. NARAYANAPERUMAL NADAR : I regard him as an authority on education.

PRESIDENT : I regard him as a gentleman about whom I know nothing and therefore I do not regard him as an authority on education. So, the honourable member may use his language as his own. I do not know who he is. Who is this Mr. K. T. Bhashyam? Is he a graduate?

MR. K. NARAYANAPERUMAL NADAR : I will quote another, Mr. Sarath Chandra Bose, leader of the oposition in the Bengal Assembly who said, on October 20, 1938, referring to the question of students and politics—

> "Students should, in normal times, equip themselves for life and they should be prepared to plunge into the movement for freedom when conditions are abnormal."* "You may be a drop in the ocean, but you are a drop that counts and has counted in the past in every other country which has sought to achieve independance."

Now, Sir, the question is whether the conditions in Travancore at the present moment are normal or abnormal. I say that the conditions are abnormal and I therefore congratulate the students of the Arts College and the Science College and the Nagercoil College for having taken an active part in politics. The following will show that the conditions here are abnormal. Firing in Neyyattinkara on the 31st August, at Chengannur on October 1st, at Pangode Forest on October 1st, at Attingal, at the Shangumukhom beach on September 2nd, at Quilon on September 2nd, and at other places.

PRESIDENT : Order, order. The question before the House is about a matter of public importance, namely, the deep sense of public dissatisfaction at suppressing the legitimate and elementary rights of

association of students. Therefore, the question of general politics, of firing and of various other matters is irrelevant and will not be allowed in this discussion.

MR. K. NARAYANAPERUMAL NADAR: With these words I support the resolution.

MR. K. G. KUNJUKRISHNA PILLAI: Sir, I beg to submit a few words on this resolution. The resolution consists of 3 or 4 parts. The first part is "the legitimate and elementary right of association of the young people in schools and colleges into a federation". The second part is the so-called imposition of a ban on them, along with the arrest and imprisonment of the President and Secretary of the Federation; the next is the suppression of the same; and the last the deep sense of dissatisfaction at the suppression.

Sir, with regard to the right of association of young people, whether that is an elementary right is itself a doubtful question. There may be legitimate occasion for forming into associations and there may be illegitimate occasions for forming into a federation or association. It is certainly not for the student to decide whether the right of association at a particular moment or for a particular purpose is legitimate or illegitimate. Therefore, Sir, when cries are made that students are not being allowed to associate themselves into either meetings or associations or federations, the question turns upon whether the objects of the association are legitimate or not. Now, Sir, what are the legitimate objects of the association of students? My submission to the House is that legitimate objects cannot and never have been intended to include controversial political matters. I quote a great and eminent authority. It was not in 1920 but only last week that Sjt. C. Rajagopalachari, addressing the students of the Loyola College Hostel said that students should not take part in active politics, and that they should only take a studious part in politics. Thereby what I understand, Sir, is that students of colleges may keep up a lively interest, a keen interest in the problems of life whether political, social, educational or otherwise; they may form into associations, discuss them, invite prominent people of all shades of opinions to give them their opinions and to talk on the matter; and they may study the matter as students. But when they step out of that position and enter the arena of politics, of principles of which there is no ultimate finality, and take part in the day to day politics, I submit Sir, that we must consider, the authorities must consider, and the parents must consider, whether the objects are legitimate. Without meaning any disparagement, Sir, I beg to inform the House that at about the time I was in the Law College there was a wave of sentiment and enthusiasm among the students with regard to what was then called the non-cooperation movement; and I may submit to this House and to every parent and to every teacher that of those students who then got out at least 99 per cent. to-day regret the step they took. They have lost their academic status, and a large proportion of them are not good citizens today and are not useful either to the State or to their own families. Therefore

[Mr. K. G. Kunjukrishna Pillai.]

Sir, I say that when there is controversy in politics, when there is heat emanated in political discussion, the students shall not take part. Students are enthusiastic, they are idealistic and are people without a sense of realities. When these students are agitated by political agitators, however eminent or otherwise, the consequences are disastrous. Therefore, I congratulate the university authorities in saying very mildly and very honestly to the students "You shall not overstep the limits. Give us the facts and figures." What is it that the Student's Federation wants? We are prepared to help you to form a sound federation." As Mr. Chandrasekharan said, it will be a help and not a hindrance to the University if it is a sound federation. Therefore, Sir, with regard to the legitimate objects of a federation it is a matter more for the authorities, the parents and other people to say than for the students themselves.

With regard to the particular federation, from what I understand, the President is a dismissed student and some of the objects of the association seem to be very curious. They are not definite and have nothing except an illusory background about them. Then a question was put to Mr. Chandrasekharan by Mr. K. R. Narayanan whether the State Congress leaders had asked the students to come into politics. Sir, I can quote instances to show that the State Congress people induced the students to take active part in politics. At Chirayinkil the students were exhorted to get out of the schools. If this is not inducing students to take active part in politics, I fail to see what it is, Sir. There was a meeting in Chirayinkil very recently where Basheer was one of the speakers. He openly exhorted the students to get out of schools. That was the position. Such instances could be multiplied. This is happening in every State Cogress meeting. In fairness to the State Congress speakers, a large number of them have been inviting students to come out of schools and colleges. That I submit is taking very active, destructive part in politics. With the help of idealistic stuff, namely students of the country, the State Congress people are playing a dangerous game. If the Students' Federation is able to approach the University authorities with a clean slate as is done by the Oxford or Cambridge students, or in any other part of the world, if they proceed on that model, I am sure, the University will surely help the Students' Federation in all possible ways. I challenge my friends Mr. Narayana Kurup and Mr. Nadar for the position taken up by them. Or for that matter, I ask the State Congress men to show whether such a sort of federation as is now sponsored exists or is even recognised in any part of the world, from Timbuctoo to Berlin. It is very unfortunate that our students are being misguided by the State Congress authorities.

In regard to the so-called ban what I wish to say is that the University authorities have only advised the teachers and parents of the students to see that their students do not go astray. I say that yerye one of us who have children attending schools must take particular

care in seeing that their boys and girls do not go astray. Let them study anything they want, socialism, politics, or even communism or ugenics, on the face of the earth. To say, fundamentally, that the students should join and take active part in the politics of the country, lest this land of Kerala should sink into the sea, is certainly unfair. This sort of exciting students to indulge in stone-throwing, every one of us must resist. We are all anxious to see that the students are properly led.

With regard to the arrest and imprisonment, I should like to get some information from the authorities. From what I understand, Sir, the President seems to have been arrested for action under Section 90 of the Criminal Procedure Code, so that he might not go about the country creating further trouble among the peaceful public.

Then, Sir, in regard to the dissatisfaction prevailing in the country, there are two aspects of the question. I consider that one side of the public can write in papers that the students are oppressed and suppressed. From that point of view, it must be satisfactory to them. To this set of people, it is a matter for great satisfaction for, they know what sort of consequences this Federation can bring out. So far as this particular Federation goes, there are no proper grounds for any sane man, sensible man, cultured man to feel satisfied about its objects. I feel that no responsible man should be misled by catchwords, nor be excited by the principles of political parties at the moment; and I want my friends to study the consequences arising from allowing the students to go astray in the name politics. If the students are permitted to be under the care of the University authorities, they will become better citizens; probably more capable than us in the matter of carrying out policies. Therefore I say to students not to take part in the politics of the country as long as they remain as students, By continuing in such an organisation, they are being encouraged on very unhealthy lines. That ought not to be encouraged. The present Students' Federation organisation is a mere hotchpatch, consisting of students and State Congress leaders. In that hotchpatch, students should never be allowed to join. It is my prayer that such an organisation is not allowed to grow at all. I congratulate the University authorities for not recognising the Students' Federation. With these words, I oppose the motion.

MR. M. L. JANARDHANA PILLAI: Sir, I am afraid the mover has not taken into consideration the feelings of parents who have got children going to school. We have been hearing the history of the Federation. The point is that the University authorities refused to grant recognition to the Federation. The history that was prevailing in this country during the last few months needs no mention. It is very well-known. There are boys who have been studying in different schools in North Travancore, who have left their places and come away to Trivandrum for studies, because they could not carry on the studies, particularly on account of the malicious and perverse influence of this

[Mr. M. L. Janardana Pillai.]

association. There are also cases when parents have found it almost difficult to send their children to school, because, the moment the students refuse to shout slogans of this association, the little boys are pelted with stones and kicked and thereby prevented from going to school and were maltreated in a very undesirable way. I ask my friend Mr. Kurup whether this is the sort of thing that should be encouraged? Is this the sort of Students' Federation which my friend Mr. Kurup wants the University authorities to accept? There were days when the so-called federation leaders came to different parts of Central Travancore. The moment they entered particular areas, a few hours before their arrival, notices were circulated announcing their arrival and requesting the people to offer receptions to these leaders. All the students, after hearing about the arrival of leaders, at the appointed time, without the permission of the headmaster or the teachers simply rushed out just because they knew that the leaders had come. What we have learnt was that these leaders definitely asked the students to defy the school authorities openly and to sing slogans against their teachers, and against constituted authority and such of them as did not subscribe to this were illtreated. The students were given the impression that they were under the control of the leaders and not under the teachers or their own guardians. They were given the idea that they were governed by the principles adumbrated by the so-called Federation. They were definitely to'd that their interests would be safe-guarded better by that organisation. I ask, is this the way in which the students ought to be guided? Is that for the good of the country. And, now, we are here called upon to consider the great disservice done to the country by preventing the students from meeting in a federation. The students were actually spoiled by the activities of the federation. A set of young people of the country have become misguided and ruined by the actions of such people. Is that a situation to be contemplated with equanimity? Are we not also men with children attending schools and colleges? Is this the way for the leaders of people to properly lead the young people of the country? My friend, here again, tries to invoke the support of this House for a state of affairs which could not be allowed in any part of the world. It is only surprising that this House should have been called upon to discuss this question as an urgent matter of public importance; and if the syndicate or the University authorities had not taken this necessary step in the right manner and at the proper time, there would have been wholesale ruination of the students, ruination of their homes. The citizens of the country are grateful to the University authorities for having taken that step at the right moment and in the proper manner.

With these remarks, I oppose the motion.

MR. N. V. JOSEPH: Sir, I have absolutely no hesitation to say that one of worst sins committed and one of the greatest calamities brought upon the country by the State Congress is its having encouraged and

incited the student population to enter into active political agitation, and cultivated a spirit of disobedience, revolt and revolution. An honourable member seems to dispute this connection of the State Congress to the students outburst. If proof is necessary to this fact which no honest man can deny, I will draw the attention of the House to the statement issued by the first lady Dictator-President of the State Congress calling upon the students to strike, to come out of the schools and not to pay fees. Does not the fact that this very adjournment motion is moved and seconded by the State Congress party, circumstantially prove that they at least sympathised with those mischiefs of the students.

The mover of this motion has told us that normally the educational authorities of Travancore have been allowing their students to associate for legitimate purposes. But he does not seem to have seriously thought of the reasons that have compelled the authorities to stand in the way of the proposed federation of the students. It is a pity that the mover conveniently forgets the immediate impulse and circumstances that have prompted them to form this federation. It has certainly its origin in the part the students played in the recent political disturbance. This federation will certainly be directed and guided, engineered and made use of by the State Congress. And what is that association at present? One need not hesitate to call it revolutionary and subversive. I do not say that the desire to attain responsible Government is in itself revolutionary. But about the method the State Congress adopts to achieve their object, it is certainly revolutionary and subversive. They are for civil disobedience. Any organised attempt to disobey the civil laws of the country is certainly revolutionary. It is the case of the Travancore State Congress itself, it is only an edition of the Indian National Congress printed in our State; and the Indian National Congress is certainly a revolutionary body. The charge of the leftists' section of the Indian National Congress against the rightists' is that the latters' methods have a tendency to rid the Congress of its revolutionary spirit and aims. The Indian National Congress may have its own reasons and justification to form itself into a revolutionary body. What is after all the objective of that Congress? To drive away the English from India and to get independence. In British India the issue is the freeing of the country from foreign domination. Democracy and responsible Government may be things to be evolved in course of time and autocracy and the monarch's personal rule may be a necessary stage in the political evolution of countries. But subjection to a foreign rule need not necessarily be a stage in constitutional evolution. Hence, for attaining the freedom of one's country one may be forced to be a revolutionary. The Indian National Congress' non-violence, civil disobedience and civil resistance are only virtues of necessity though there may be high idealists among them who believe that non-violent sathiagraha is a panacea for all political evils. The House will remember that Indians are a disarmed and unarmed nation, and even if they wish they have not the weapons to face the Imperial armaments of the British. In the case of British India it is patriotism that is the impulsive motive.

[Mr. N. V. Joseph.]

On the other hand in a Native State where an Indian Maharaja rules, in a fight of the subject for the attainment of responsible government, patriotism has no place. Both the Prince and the people are patriotic alike. Here it is only a question of arrangement within the family. Patriotism comes into play only where there are foreign factors. Hence my contention is that the methods adopted in British India are not suitable in Native States. Consequently the revolutionary methods which our State Congress copies from the Indian National Congress are out of place here. When I say it is a revolutionary body you should not take it that I mean that our State Congress has already manifested all the forms of a revolutionary body. A human being's life starts from the cradle and ends in the grave in stages of development.

Any association of the students with our State Congress cannot but make them revolutionaries and more dangerous revolutionaries than the State Congress people. I am certain that the students that threw the mud and stones in important places and made outbursts and bawled out "Inquilab Zindabad" would not have hesitated to use swords and machine guns if they had them in hand. What have the students to do with these things? I ask in all earnestness and gravity. Their function is to learn. To disseminate a spirit of revolt and disobedience among them is highly injurious to the country. I do not know whether the honourable mover and the seconder of this motion have grown up children. They are too young-excuse me-to have grown up school-going children; and I can personally testify to the heart burnings and anxieties carried in the country by the recent outbursts of student revolt. It has diffused such an atmosphere of revolutionary spirit among the student population that I am really anxious about the future of our social and family structure. The mover of this resolution says that it is the legitimate and elementary right of the students to federate. For what purpose? I ask. We should not take terms and phrases at their absolute values. Values are invariably relative in this world of limitations. Are we to allow the students to federate, to assert their rights against their educational authorities? The idea is simply preposterous. Is the relation between the teacher and student of a contractual nature as it is between labour and capital? Do the educational authorities function to exploit the students? What is the teacher to gain at the expense of the student? Are we to allow our children to form associations and federations to assert their rights against parents? Woe be to the society that concedes that liberty. The student's birth-right against educational authorities! I do confess I do not understand what these people actually mean. In my view a student should always be—I mean all the twenty-four hours—under the guidance, or direction or supervision of the parents or guardians or educational authorities. Is it not the legitimate and elementary right of a man to lodge where he wants, and to board where he pleases? If this is also the right of a student as a human being, why on earth, I ask, you insist on having hostels and boardings and supervision by school authorities. I believe these are elementary prin-

ciples. It is not only the right but also the duty of the educational authorities to guide and control the students in everything--in the books they read, in the games they play, in the dress they put on, in the companions they mingle with. The thoughts and thinking of the students too should be guided by the educational authorities. If that is the relation to be maintained between the students and educational authorities I wonder how we can sympathise with the attempt of our students to form a federation to assert their rights against the educational and constituted authorities. It is impossible to forget so soon what had happened in our State during the past few months. I thought the students had all got high temperature in those days. So if the proposed federation is not yet banned by the educational authorities, I will appeal from the floor of this House, not only to ban it but to severely penalise it.

Sir, one generation of students is already spoiled. Whether you give us responsible government or not, for God's sake, spare the country from this calamity. If this spirit of revolt and disobedience among the students is not nipped in the bud, I can prophesy that, not only this generation, but many a coming generation will get spoiled. I will therefore request the authorities to stand firm and control the students. Sir, with these words, I oppose the motion.

MR. KAINIKKARA M. PADMANABHA PILLAI: I oppoce the adjournment motion. In doing so I do not think it necessary to enter deeply into the question as to whether students can be allowed to take part in politics or not. I do not think it necessary either to analyse the past incidents and place the responsibility for them on the State congress. Again, I do not think it necessary to describe in detail the extremely disgraceful and disorderly life led by the students during the past few months. Even if I am prepared to concede all these points favourably to the mover of the adjournment motion this motion cannot stand. Even if Messrs K. T. Bashyam and Sarath Chandra Bose are turned into educational authorities it cannot stand. It cannot stand for the simple reason that it is based on a stupidly fallacious presumption that there has been a ban. But the fact is that there has been no ban. I asked the honourable mover of the motion whether he would enlighten me as to what the ban was, the authority that made the ban and the nature of the ban. He told me that he was not prepared to answer me. Sometimes bluff is a sweet way of hiding ignorance. When the honourable member was wasting the time of the House on an adjournment motion based on an absurdity and when the mistake was pointed out to him, he might in courtesy have answered my questions. At least when a suggestion was thrown to that gentleman, he might have had the intelligence to be benifitted by the hint. Anyhow, now I may inform the honourable member that he has been speaking nonsense pure and simple.

MR. K. NARAYANAPERUMAL NADAR: Sir, I rise to a point of order. The honourable member has used the word "nonsense". Is it parliamentary?

PRESIDENT : The word "nonsense" as applied to another honourable member is not parliamentary.

MR. KAINIKARA M. PADMANABHA PILLAI : I only meant that there was no sense and only in the meaning of no sense did I use the word nonsense.

PRESIDENT : The ruling of the Chair must be obeyed.

MR. KAINIKKARA M. PADMANABHA PILLAI : Because it is unparliamentary I do not use it. The whole thing was an illusion and a mistake. The Pro-Vice-Chancellor has explained what took place in the Syndicate. All that the Syndicate did was to say that they could not recognise the Students' Federation. They had openly said that their purpose was to crush the University. They said "We stand for crushing you. You please recognise us". The Syndicate said "All right, dear friends we cannot shake hands with you, cannot make you our bedmates". That is all what we said. Of course I am not surprised in Mr. Kurup making this mistake. There was a time when the State Congress people were leading the students in this country. There was a time when the State Congress leaders and leaders of the students were making sacrifices for what they considered to be right. When those things were taking place, Mr. Kurup had safely retreated into a cocoon. The misfortune is that today we have only three State Congress members in this hall and when the agitation was at its height all these three gentlemen were hiding behind curtains. So naturally they have not understood what was taking place. If Mr. Pattom Thanu Pillai or Mr. Varghese were here, they would not have moved this motion because they know the facts. Now Mr. Kurup gets out of his hiding place and comes forward with a motion and wastes our time. I only wish to inform the house that the educational authorities take a deeper interest in education and in the life of the students than Mr. Kurup or any friend of his. I oppose the motion.

MR. M. K. MACKAR PILLAI സർ, ഈ പ്രമേയത്തെപ്പററി സംസാരിക്കുമ്പോൾ എന്റെ അനുഭവത്തിൽപ്പെട്ടിട്ടുള്ള ഒന്നുരണ്ടു സംഗതികൾ കൂടി പറയണമെന്നു ഞാൻ വിചാരിക്കുന്നു. കഴിഞ്ഞ അസംബ്ലിയോഗം കഴിഞ്ഞു ഞാൻ ആലുവായിൽ എത്തിയപ്പോൾ അവിടെ വിദ്യാർത്ഥികളുടെയിടയിൽ ഒരു സ്ട്രൈക്ക് ഉണ്ടായി. അവിടെ പ്രിപ്പാറട്ടറിക്ലാസിൽ പഠിക്കുന്ന ൧൦ വയസ്സായ ഒരു കുട്ടി പതിവായി പള്ളിക്കൂടത്തിൽ പോകുന്നതും വരുന്നതും മററു കുട്ടികളുടെ കൂടെയാണ്. ഒരു ദിവസം അയാൾ പതിവായിവരുന്ന സമയത്ത് സ്കൂൾ വിട്ടിട്ട് വന്നില്ല. ഒടുവിൽ ആറുമണിക്കാണു വന്നു ചേർന്നതു. താമസിച്ചു ചെല്ലാനുള്ള കാരണം എന്താണെന്നു ചോദിച്ചപ്പോൾ മററു കുട്ടികളെല്ലാം ഒരുമിച്ച് ഒരു ഘോഷയാത്രപോയി എന്നുപറഞ്ഞു. എന്തിനുപോയി? ഞങ്ങളുടെ പ്രതിഷേധം കാണിക്കാൻ. എന്തിനാണ് പ്രതിഷേധം? അതു ഞങ്ങളുടെ ആളുകളെ തല്ലിച്ചു. ആരു തല്ലിച്ചു? സി. പി.-സി. പി. ആ

രാണ്? അതറിഞ്ഞുകൂടാ. (ചിരി) നിങ്ങൾ പോലീസ് സ്റ്റേഷനിൽ പോയി കല്ലെറിഞ്ഞതെന്തിന്? അതു ഞങ്ങളുടെ പ്രതിഷേധം കാണിക്കാൻ. പോലീസുകാർ നിങ്ങളെ തല്ലുകയില്ലേ? ഞങ്ങളും തല്ലും. ഇങ്ങനെയുള്ള ഒരു വിചാരം കുട്ടികളുടെ മനസ്സിൽ ഉണ്ടായിട്ടുണ്ട്. ഇതിനെല്ലാം കാരണം ആലുവാ യൂണിയൻ കാളേജിലെ ചിലവിദ്യാർത്ഥികളാണ്. ഇതിൽ പ്രായമായ കുട്ടികൾ, ഡിസ് ലായൽ എന്നോ സബ് വെർസിവു എന്നോ ഒന്നും ഞാൻ പറയുന്നില്ലെങ്കിലും അവരൊക്കെ തെമ്മാടികളാണ്. (ചിരി)

ഈ ഘോഷയാത്രക്കാർ, മലയാളം പള്ളിക്കൂടത്തിലും പെൺപള്ളിക്കൂടത്തിലും ഒക്കെ പോയി ബഹളമുണ്ടാക്കി. മി. പട്ടം താണുപിള്ളക്കും, മി. ടി. എം. വർഗീസിനും കീജേയ് വിളിച്ചു. ഇതൊക്കെ കഴിഞ്ഞതിനുശേഷം ദേശസേവകന്മാർ എന്നും ദേശസേവികമാർ എന്നും ചിലർവന്നു. ഇതിനൊക്കെ കാരണം ഗവണ്മെന്റു കർശനമായി നടപടി നടത്താഞ്ഞതാണ്. യൂറോപ്പിൽ മഹായുദ്ധകാലത്തു വാർബേബീസു ഉണ്ടായതുപോലെ ഇവിടെ എത്രകാൺഗ്രസു ബേബീസാണുണ്ടാകാൻ പോകുന്നതെന്നറിഞ്ഞുകൂടാ. ഇത്രയും പ്രസ്താവിച്ചുകൊണ്ടു ഞാൻ ഈ മോഷനെ എതിർത്തുകൊള്ളുന്നു.

MR. M. SIVATHANU PILLAI: Sir, I rise to a point of order. Are those remarks of Mr. T. C. Kesava Pillai relevant to the issue before the House?

PRESIDENT: The honourable member will confine his remarks to the discussion before the House.

MR. T. C. KESAVA PILLAI: തിരുവിതാംകൂറിലെ ഒരു പ്രജയാണു ഞാനും എന്നോർമ്മയോടുകൂടി സംസാരിക്കുകയാണു ഞാൻ. ആ നിലയിൽ മി: ശൈനിക്കര പത്മനാഭപിള്ള പറഞ്ഞ അഭിപ്രായങ്ങളെ ഖണ്ഡിക്കേണ്ടു ചുമതല എനിക്കുണ്ട്. ഭാവിസന്താനങ്ങളെ ചീത്തയാക്കണമെന്നുള്ള ആഗ്രഹക്കാരനല്ല ഞാൻ. പ്രോവൈസ് ചാൻസലരുടെ സ്റ്റുഡൻറ്സ് ഫെഡറേഷനെ സംബന്ധിച്ചുള്ള അഭിപ്രായം കേട്ടിടത്തോളം ഇതിനെ അനുകൂലിക്കാൻ ഒരിക്കലും നിവൃത്തിയില്ല. പല വലിയ ആളുകളും വഴിതെററിപ്പോയതുപോലെ ചെറിയ ആളുകളും വഴിതെററിപ്പോയി എന്നേയുള്ളു. അതുകൊണ്ടു സ്റ്റേററു് കാൺഗ്രസിലെ ഒരംഗമായ എന്റെ സ്നേഹിതൻ മി: കരുപ്പി:നാട്ട് എനിക്കു പറയുവാനുള്ളതു് നിങ്ങളുടെ ... ...

MR. M. SIVATHANU PILLAI: Sir, he is addressing the mover.

PRESIDENT: He is addressing the mover through me,

MR. T. C. KESAVA PILLAI: സ്ററുഡൻറസ് ഫെഡറേഷൻ ഇന്നതാണെന്ന് പ്രോ വൈസ് ചാൻസ്ലർ ക്ലിപ്തപ്പെടുത്തി പറഞ്ഞതുകൊണ്ട് ഞാൻ ഈ പ്രമേയത്തെ എതിർക്കുന്നു.

സർ, പല രാജ്യങ്ങളിലും വിപ്ളവങ്ങൾ നടക്കുക പതിവാണ്. തിരുവിതാംകൂറിലും സമീപകാലത്ത് പലപല പ്രസ്ഥാനങ്ങളും ഉൽഭവിച്ചു എങ്കിലും അവ ശക്തിയായി നിവൎന്നു വരാതെ ശ്രീപത്മനാഭൻെറ പാദത്തിലെല്ലാം അടിപണിയുകയാണ് ചെയ്തതു്. "സംയുക്തം" എന്ന പേരോടുകൂടിയ ഒരു പിശാച് ഇങ്ങു വന്നു കയറി. അതിൻെറ ചില സിരകളെല്ലാം അററ് അധോഗതിയായപ്പോൾ, അതു വേറൊരു രൂപത്തിൽ തിരുവിതാംകൂറിലെ പൌരാവകാശിക്കു ദോഷം ഉണ്ടാകുമൊ എന്നു തോന്നത്തക്ക രീതിയിൽ ഒരു വലിയ പ്രസ്ഥാനമായിത്തീർന്നു. അതിനെ സംബന്ധിച്ച് ചില അടിയന്തിരപ്രമേയങ്ങൾ കഴിഞ്ഞ അസംബ്ലിയിൽ വരികയും, അപ്പോഴെല്ലാം ഈശ്വരവിശ്വാസവും ഭക്തിയുമില്ലാത്തതുകൊണ്ടാണ് ഇങ്ങനെ വന്നതു് എന്നു ഞാൻ പറയുകയും ചെയ്തിരുന്നു. കല്ലേറിവരും, രക്തച്ചൊരിച്ചൽവരും, പോലീസുകാർ വഴിതെററാതെ സൂക്ഷിക്കണമെന്നെല്ലാം ഞാൻ അന്നു പറഞ്ഞിട്ടുണ്ടു്. ഇതൊക്കെ വിദ്യാഭ്യാസഡയറക്ടരുടെ കുററംകൊണ്ടു വന്നതാണെന്നാണ് എനിക്കു തോന്നുന്നതു്. നമുക്കു വിദ്യാഭ്യാസമുണ്ടെന്നു സമ്മതിക്കാം. സ്വാഭാവികമായി കോഴിമുട്ട അടവച്ചു കുഞ്ഞുണ്ടാകുന്നതു പോലെ മാർത്താണ്ഡം വൈ. എം. സി. എ. യിൽ കൃത്രിമമായി മുട്ടയ്ക്കു ചൂട് കൊടുത്തു് കോഴിക്കുഞ്ഞിനെ ഉണ്ടാക്കുന്നുണ്ടു്. ഇത്തരത്തിൽ കൃത്രിമമായ രീതിയിലാണ് ഇവിടെ ഈശ്വരഭക്തി ഉണ്ടാക്കുന്നതു്. അതിൽ ആരെയും കുററം പറഞ്ഞിട്ടാവശ്യമില്ല. ഇന്നുതന്നെ യൂണിവേഴ്സിററി സിൻഡിക്കേററിലെ ഒരംഗം എന്ന നിലയിൽ ഈ സഭയിലെ ഒരംഗമായ മി: കൈനിക്കര പത്മനാഭപിള്ള ഈ സഭയിലെ മറെറാരംഗത്തെപ്പററി നികൃഷ്ടമായ ഭാഷയിൽ നടത്തിയ ഒരു വിമർശനം എന്നെ വളരെ സങ്കടപ്പെടുത്തുന്നുണ്ടു്. അദ്ദേഹം അതു പിൻവലിക്കണമെന്നു ഞാൻ താല്പര്യപ്പെടുന്നു. ഞാൻ സ്റ്റേററ്കാൺഗ്രസ്സിനെ അഭിനന്ദിക്കുന്ന ഒരുത്തനല്ല. എൻെറ നിയോജകമണ്ഡലത്തിൽതന്നെ അനേക സ്റ്റേററ്കാൺഗ്രസ്സ് പ്രതിനിധികളുണ്ടു്. സ്റ്റേററ്കാൺഗ്രസ്കാരായ എതാനും അംഗങ്ങളെ നാം ഇവിടെ തള്ളിനിറുത്തിയിരിക്കുന്നു.

മഹാത്മാഗാന്ധി ഒരിക്കൽ ഒന്നു പറയുന്നു, വേറൊരിക്കൽ വേറെ ഒന്നു പറയുന്നു. നമുക്കു ഉത്തരവാദിത്വഭരണം വേണ്ട എന്നു ഞാൻ പറ

യുന്നില്ല. മഹാവിഷ്ണു ഭക്തന്മാരെ ശത്രുക്കളായി ജനിച്ചാൽപോലും രക്ഷിക്കുന്നു. അതുപോലെ പൊന്നുതമ്പുരാനോടു നമുക്കാവശ്യമുള്ളതപേക്ഷിച്ചാൽ കിട്ടും. അതിനിടകൊടുക്കാതെ വ്യക്തിവിദ്വേഷവും കക്ഷിപ്പിണക്കവും ഉണ്ടാക്കുന്ന വ്യക്തികളെ ഞാൻ വെറുക്കുകയാണു ചെയ്യുന്നതു്. സ്റ്റേറ്റ്കാൺഗ്രസ് അംഗങ്ങൾ ഇപ്പോൾ വഴിതെറ്റിപ്പോകുന്നുണ്ടെങ്കിലും അവർ നേർവഴിക്കു വന്നു മഹാരാജാവു തിരുമനസ്സിലെ തൃപ്പാദങ്ങളിൽ അഭയം പ്രാപിക്കുമെന്നു നമുക്കാശിക്കാം.

MR. M. L. JANARDHANAN PILLAI: Sir, I move that the question be now put.

The motion was put and carried.

MR. N. NARAYANA KURUP: Sir, the object of my motion was just to bring to the notice of the House, the public dissatisfaction at the suppression of the elementary right of students to associate into a Federation. But two of the honourable members, the old *nivarthana champions*, namely Messrs N. V. Joseph and Kainikkara Padmanabha Pillai, had been very unkind towards me for that sin of intimation. Mr. Padmanabha Pillai, who said that he alone had the monopoly of speaking sense for the past two or three years, was saying that if Messrs Pattom and T. M. Varghese were here, they would not have moved this motion. To that, my reply is that if Mr. Padmanabha Pillai was not the General Inspector of Grant in-aid Schools of a particular institution, he would not have opposed this motion, in a language unworthy of his position in this House. He was asking me, whether I am aware of any ban, and if so, whether I know the nature of the ban. Being a member of our University Syndicate, I am sure that he was not ignorant of the ban and the nature. The Pro-Vice Chancellor admitted that in consultation with the Syndicate, he advised—I may say—commanded, that students should not join the Federation. My friend was complaining that I did not answer him. If he were to pretend ignorance, I am not bound to answer.

Honourable member, Mr. Janardanan Pillai, also remarked that when leaders of State Congress and Students' Federation visited Alleppey, the students left the schools before time, to attend the meetings; and in meetings they were advised to leave the schools. I deny all his allegations. No meeting was held before 5 o'clock on those occasions, No advice to leave the schools and college was given.

MR. M. L. JANARDHANAN PILLAI: I said only the organisers of the Students' Federation.

MR. N. NARAYANA KURUP: In fact, the leaders of the State Congress were always advising students not to participate actively in politics, but to mind their studies. If students of mature thought and age, expressed their opinion on live political matters, at a time, when, their parents, relations and friends were incarcerated in jails, they themselves had to suffer assaults at the hands of police for their

enthusiasm in cheering a particular party whose opinion they favoured, is the State Congress to be blamed I ask? I do not know why the names of the leaders of the State Congress are drawn into this discussion, in their absence, by those who are unworthy of even mentioning their names.

From the nature of the discussion, Sir, I also think as some of my friends said—and rightly they said—that I am attending a Rump—Parliament—a Parliament from where all opposition has been removed.

PRESIDENT: Before the question is put to the vote of the House, under Standing Order 24, I propose to exercise my right to say a few words on this matter; because, I consider that this subject is one of paramount importance to the State. It is not a small matter as certain honourable members seem to think; it is a matter which, in the opinion of the Government and of myself, is bound up with the orderly existence of the State. In speaking to this honourable House, let me repeat, though it may favour some autobiography, let me repeat, what I told Mr. Basheer who came to interview me on behalf of the Federation. I spoke to him as one who has got 25 years of educational experience in one University. I spoke to him as one who represented an educational institution of great importance *viz.*, the Senate of the University of Madras; I spoke to him as one who had spent from his own purse not thousands and tens of thousands but lakhs of rupees for the benefit of students. I said to him, to Mr. Basheer, who came to me on behalf of the Students' Federation, that, in no part of the civilized world were students allowed to conduct political demonstrations. He then referred to China. We know what is happening in China. He then said: "Supposing, Sir, we feel that your political conduct is deserving condemnation, should we not say so?" I pointed out to him that it is within the right of every student to discuss politics, but only within the walls of his college or school. There, I said, even controversial politics can be discussed among themselves, not only I say, questions of responsible government, but also questions on bolshevism, communism, expropriation and abolition of property. In the academic manner, in the academic atmosphere and in academic surroundings, subject to academic influence, these matters, even other burning questions of political and topical interest, can be discussed freely among students. But to come out into the street and the market place and take part in those activities which would undoubtedly bring them in contact and sometimes into collision with the authorities, with people who assert and enforce the supremacy of the State, cannot be allowed.

When the question of the Oxford Union was mentioned by Mr. Basheer, I said that, no doubt, academical authorities in England, France and America have given a great latitude to students, but they never contemplated students coming out of their colleges or schools, and taking part in controversial politics. Mr. Basheer and another gentleman—I think his name was Stephen—who came on behalf of the

Federation, said that they were appealing to me to do them justice. They said that they retained the right of criticism, the right to criticise the acts of the administration. I told them that it was perfectly legitimate for them to criticise Government within their college walls. But if they wanted to do that outside, as students, they could not. But there are two methods open to them if they wanted to criticise Government and enter into controversial politics. They must come out of their colleges and enroll themselves as members of that political organisation if that organisation would take them. But I pointed out to them that no sane, rational and self-respecting political organisation would take young people with immature power of understanding to take part in political activities which they consider are for promoting the country's cause. Before acceding to their request I wanted from them an undertaking that they would not enter into any open fight with the constituted authority. They said that it was not possible for them to do so. But they told me that they would think over my propositions and send a formal reply in two days. And I have waited for two months, no reply has come. This is the genesis of the whole matter so far as the ban is concerned.

So long as students are not willing to submit themselves to the elementary, self-denying part of their life as students, they are not fit to enjoy the privileges specially belonging to them. Whilst they were students they must first learn to make themselves fit for the struggles in life, political or otherwise. For, after all, student life is a period of preparation, a period of apprenticeship. It is a period of life intended for the purpose of enabling the student to grow healthier and stronger, just as a tree in its young stage has to be tended and nourished to make it grow taller, stronger and wider, and ought not to be stimulated and forced into unnatural ways.

What about primary and secondary school boys who are below eight, nine or eleven and, who too can be members of this Federation? (*Laughter.*), a boy of eleven or twelve claiming the right to criticise the action of Government? That is as good as minors being led into crooked paths without the consent of their parents. Is this just and right? I ask the exponents of this creed, of this Federation.

Now, the question before the House is this. Does this House favour minors, both boys and girls, with premature power of understanding, being led into politics of a controversial character? Or, would this House endorse the other proposition which finds favour in every civilized community in the world that a small boy or a young girl should be left unhampered to learn to make himself or herself fit for the struggle in life, ahead of them, and merely to form opinions on politics for the purpose of translating those opinions into practise later on? Are we to force the growth of students in any unnatural way? That is the problem before this House.

The motion was put to the vote of the House and lost.

MR. K. NARAYANAPERUMAL NADAR: Sir, I demand a poll.

A poll was taken and the House divided as follows:—

AYES—2.

1 N. Narayana Kurup
2 K. Narayanaperumal Nadar

NOES—50.

1 Mr. Kottalil P. Abraham
2 ,, P. C. Adichan
3 Sahib Bahadur V. Chandamiah
4 Mr. S. Chattanatha Karayalar
5 ,, M. L. D'Cruz
6 Srimati K. Devaki Antharjanam
7 Mr. E. E. Pandarathil
8 ,, D. Francis
9 ,, M. Govinda Pillai
10 ,, M. L. Janardana Pillai
11 ,, M. P. Joseph
12 ,, N. John Joseph
13 ,, N. V. Joseph
14 ,, Joseph Vithayathil
15 ,, K. C Karunakaran
16 ,, M. Kesava Panickar
17 ,, T. C. Kesava Pillai
18 ,, T. T. Kesavan Sastri
19 ,, K. P. Kochukora Tharakan
20 ,, Kaviyoor K. Kochukunju
21 ,, S. Krishna Aiyar
22 ,, Puthupalli S. Krishna Pillai
23 ,, Thariatu Kunjithommen
24 ,, K. G Kunjukrishna Pillai
25 Sahib Bahadur M. K. Mackar Pillai
26 Mr. P. V. Mathai Chemparathy
27 ,, S. Narayana Pillai
28 ,, P. G. Narayanan Unnithan
29 ,, R. Narayanan Namboori
30 Srimati T. Narayani Amma
31 Mr. M. K Nilakanta Aiyar
32 ,, Kainikkara M. Padmanabha Pillai
33 ,, K. P. Padmanabha Menon
34 ,, P Parameswaran Pillai
35 ,, J. E. A. Pereira
36 Mrs. M Poonen Lukose
37 Mr. N. Ramakrishna Pillai
38 ,, Codiveetil C. Ramankunju
39 ,, M. Ramiah Pillai
40 ,, M. Ramachandra Rao
41 ,, P. Sivarama Pillai
42 ,, M Sivathanu Pillai
43 ,, E. Subramonia Aiyar
44 ,, G. B. E. Truscott
45 ,, E. P. Varghese
46 ,, Puliyoor T. P. Velayudhan Pillai
47 ,, N. Velu Achary
48 ,, P. Vivekanandam
49 Dr. C. R. Harler
50 Mr. P. Narayana Pillai

NEUTRAL—1.

Mr. K. R. Narayanan.

The motion was declared lost.

Trivandrum
1939

A. GUNAMANI,
Secretary Sri Mulam Assembly.

PROCEEDINGS
of
THE TRAVANCORE SRI MULAM ASSEMBLY.

(OFFICIAL REPORT.)

SECOND ASSEMBLY.

FOURTH SESSION, 1939/1114.

Friday the 10th February 1939/28th Makaram 1114.

The Travancore Sri Mulam Assembly re-assembled in the new Legislative Chamber Hall at 11 A. M. on Friday the 10th February 1939 with the Dewan-President in the Chair.

NEW MEMBER.

Khan Bahadur G. S. Abdul Khareem Sahib (Commissioner of Police) took the oath and signed the rolls.

QUESTIONS AND ANSWERS.

Perumbavoor Koovappadi village road.

5. * **MR. K. P. KOCHUKORATHARAKAN** (*Kunnatnad* cum *Parur*): Will the Government be pleased to state:

(*a*) whether petitions have been received either by Government or by the head of the P. W. D. for repairing the Perumbavoor-Koovappadi village road so as to make it cartable; and

(*b*) if so, the steps taken thereon?

MR. G. B. E. TRUSCOTT (*Chief Engineer*): (*a*) Yes.

(*b*) The investigation conducted revealed that expenditure on the work is incompatible with the urgency.

Embankment at Vallam.

6. * **MR. K. P. KOCHUKORATHARAKAN**: Will the Government be pleased to state:

(*a*) whether the inhabitants of Vallam, a place on the M. C. road about 1 1/4 miles north of Perumbavoor, have put in any application or petition to the Government or the head of the P. W. D. for raising the embankment at that place and for reconstructing the small bridge there so as to afford facilities for vehicular traffic during rainy season;

G. P. T. No. 1548. 350.

[Mr. K. P. Kochukoratharakan.]

(*b*) if so, the steps taken on it and the stage at which the matter stands at present ; and

(*c*) the number of times during the years 1110 and 1112 that the department established ferry service at the above place and the expenditure incurred for the purpose ?

MR. G. B. E. TRUSCOTT : (*a*) Yes.

(*b*) The Chief Engineer has been asked to provide funds for the work as early as possible, the estimated cost of the work being Rs. 15,000.

(c)	*Year.*	*Number of times.*		*Expenditure.*
	1110 M. E.	2	(9 days.)	Rs. 12-6-0
	1112 M. E.	4	(15 days)	Rs. 20-10-0
			Total	Rs. 32-16-0

Public wells in the Vilavankod taluk.

7. * **MR. C. JEBAMONY NADAR** (*Kalkulam* cum *Vilavankod*) : Will the Government be pleased to furnish the following information *viz* :

(*a*) the number of public wells in each of the undernoted pakuthies ; and

(*b*) the area of the pakuthies ?

1. Painkulam pakuthy, Vilavankod taluk
2. Methukummal Do. Do.
3. Kunnathoor Do. Do.
4. Kilmidalam Do. Do.
5. Midalam Do. Do.
6. Keelkulam Do. Do.
7. Killiyoor Do. Do.
8. Nattalam Do. Do.

MR. M. K. NILAKANTA AIYAR (*Ag. Chief Secretary to Government*) : (*a*) & (*b*) * A statement giving the information is laid on the table.

MR. C. JEBAMONY NADAR : May I know how many of these wells are without water ?

MR. M. K. NILAKANTA AIYAR : It is not now possible to answer the question.

List of Agricultural and Veterinary Inspectors.

8. * **MR. D. FRANCIS** (*Kalkulam* cum *Vilavankod*) : Will the Government be pleased to lay on the table a statement by caste of Agricultural and Veterinary Inspectors of the Agricultural Department with their names, pay and date of appointment ?

MR. P. G. NARAYANAN UNNITHAN (*Ag Secretary to Government*) : † The statement is laid on the table.

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* Vide Appendix I.

† Vide Appendix II.

Memorial of Jaggery Manufacturers.

9. * **MR. C. JEBAMONY NADAR**: Will the Government be pleased to state:

(*a*) whether they have received any memorial from the Palmyra jaggery manufacturers of the State through the Travancore Chamber of Commerce praying for the cancellation of customs duty on jaggery;

(*b*) whether any and what orders have been passed on the same; and

(*c*) whether the Government are realising tree tax on Palmyra in South Travancore?

MR. M. P. JOSEPH (*Ag Excise Commissioner*):

(*a*) Yes.

(*b*) Yes. The tariff value of jaggery for purpose of export duty has been reduced from Bh. Rs. 12-8-0 per cwt. to Bh. Rs. 10-0-0 per cwt. with effect from the 6th December 1938.

(*c*) Tree tax is realised by the Excise Department for palmyra trees tapped for fermented toddy.

MR. C. JEBAMONY NADAR: May I know whether the palmyra trees in the taluks of Kalkulam and Agasteeswaram are taxed?

MR. M. P. JOSEPH: The palmyra trees tapped for fermented toddy alone are taxed.

MR. C. JEBAMONY NADAR: Are palmyra trees tapped for sweet toddy taxed?

MR. M. P. JOSEPH: They are not taxed by the Excise Department. It seems that the Revenue Department tax about 8 cash per tree.

MR. K. NARAYANAPERUMAL NADAR: May I know the date of the memorial?

MR. M. P. JOSEPH: I cannot say the exact date. It was about two years back.

MR. K. NARAYANAPERUMAL NADAR: May I know the reasons stated in the memorial for the cancellation of customs duty on jaggery?

MR. M. P. JOSEPH: The reason stated was the protection of the interest of jaggery makers.

MR. K. NARAYANAPERUMAL NADAR: May I know whether the reduction in the tariff value of jaggery from Rs. 12-8 as. to Rs. 10 has affected the export of jaggery?

MR. M. P. JOSEPH: No, it has not. On the other hand we find that this year the export is less.

MR. K. NARAYANAPERUMAL NADAR: May I know whether the Thuckala Sugar Factory after it has begun to be run by Parry & Co. has affected the export of jaggery?

MR. M. P. JOSEPH: So far as I know, it has not affected.

MR K. NARAYANAPERUMAL NADAR: May I know whether it is a fact that Parry & Co. made a representation to the Government that customs duty on jaggery should be enhanced?

MR. M. P. JOSEPH: Yes.

MR. K. NARAYANAPERUMAL NADAR: May I know the date of that representation?

MR. M. P. JOSEPH: It was given at the time of the memorial?

MR. K. NARAYANAPERUMAL NADAR: May I know the approximate loss of income that Government may incur if customs duty on jaggery is abolished?

MR. M. P. JOSEPH: I cannot say now.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the honourable member the total amount of money collected in the year 1113 by way of customs duty on palmyra jaggery?

MR. M. P. JUSEPH: I cannot give the figure now.

Bridge at Thottapally.

10. ***MR. S. NARAYANA PILLAI** (*Quilon cum Kottarakara*): Will the Government be pleased to state;

(*a*) what was the original estimated cost of putting up the temporary bridge at Thottapally;

(*b*) what is the sum actually spent on the construction of the bridge;

(*c*) the name of the officer who was in charge of the construction of the bridge together with his qualification; and

(*d*) whether he had sought the advice of any qualified person in regard to the feasibility of the scheme?

MR. M. K. NILAKANTA AIYAR: (*a*) Original estimate for a bridge for light loading Rs. 3,500. This was changed to a permanent bridge for heavy loading estimated to cost about Rs. 10,000.

(*b*) The work has not yet been completed. It is expected to cost Rs. 10,000.

(*c*) Mr. S. Kamesam, the Director of Development. Full Membership of the Institution of Engineers (India) of 6 years' standing. Honours from the Madras Engineering College and first in B. E. (Mech.) of the Madras University in 1920. Author of a Government of India publication entitled "Treated timber for highway bridges" and of another dealing with "Timber bridge design and construction" in course of publication by the Government of India. Expert for the Forest Research Institute, Dehra Dun, for long span bridge construction. The only South Indian Engineer who has won the blue riband of the Institution of Engineers for 1932-33 His Excellency the Viceroy's prize.

(*d*) There was no necessity for this, and the Director of Development is fully qualified to design and undertake the work in question.

Thottapally Bridge.

11. ***MR. P. NARAYANA PILLAI** (*Mavelikara cum Kunnatur*): Will the Government be pleased to state:

(*a*) who was supervising the construction of the Thottapally bridge;

(*b*) whether there was any stipulation that the bridge should be completed before any particular date; and

(*c*) what is the amount spent on it?

MR. M. K. NILAKANTA AIYAR: (*a*) Director of Development.

(*b*) No.

(*c*) About Rs. 6,000.

MR. P. NARAYANA PILLAI: May I know whether there is any guarantee about the durability of the bridge?

MR. M. K. NILAKANTA AIYAR: There is no guarantee. But I may say for the information of the House that in America there is a railway bridge which is made of treated wood and that this has been lasting for 50 years.

MR. K. P. KOCHUKORATHARAKAN: അമേരിക്കയിലേയും ഇവിടത്തെയും ക്ലൈമേററു് ഒരുപോലെയാണോ?

MR. M. K. NILAKANTA AIYAR. അമേരിക്കയിലെപ്പോലുള്ള കണ്ടിഷൻ ഇവിടെയുണ്ടെങ്കിൽ ഇവിടെയും അത്ര ഈടുനിൽക്കും.

MR. K. P. KOCHUKORATHARAKAN: എത്ര വർഷം നിലനിൽക്കും.

MR. M. K. NILAKANTA AIYAR: ഇവിടെ കുറഞ്ഞതു ൨൫ വർഷം നിലനിൽക്കും.

Wooden bridge at Thottapally.

12. ✱**MR. N. NARAYANA KURUP** (*Ambalapuzha* cum *Shertala*): Will the Government be pleased to state:

(*a*) whether sanction has been accorded for the construction of a wooden bridge at Thottapally in the Ambalapuzha Taluq;

(*b*) if the answer to part (*a*) is in the affirmative, when the sanction was given;

(*c*) the estimated cost for the work;

(*d*) whether tenders were invited for the work;

(*e*) the name of contractors or firm who were entrusted with the work;

(*f*) when the work was commenced;

(*g*) the name and designation of the officer who has been in charge of the work;

(*h*) whether any agreement has been made and the period specified for the completion of the bridge;

(*i*) whether any attempt was made to complete the work before the visit of His Excellency The Viceroy on the 9th January 1939;

(*j*) whether the attempt has been successful;

(*k*) if the answer to part (*j*) is in the negative, what were the circumstances under which the attempt was a failure;

(*l*) the total amount spent on the bridge so far; and

(*m*) whether regular and through traffic of line boats and *Vallums* between Alleppey and Quilon have been stopped or interrupted on any occasion on account of the above work?

MR. M. K. NILAKANTA AIYAR : (a) Yes.

(b) 8th December 1938.

(c) Rs. 10,000.

(d) No.

(e) The work was done departmentally.

(f) 9th December 1938.

(g) Mr. S. Kamesam, B. E., (Mech) M. I. E., (Ind.,) Director of Development, Trivandrum.

(h) No.

(i) Yes.

(j) No.

(k) There was nothing wrong or defective with the bridge. Except for the flooring system, the bridge was completed on one bank of the channel, and to prevent dislocation of traffic, it was pushed across the channel. During the night of the 8th January, one of the boats supporting one end of the bridge sank suddenly due to some rotten planking giving way at the bottom of one of the boats. When the boats sank, the bridge came down.

(l) About Rs. 6,000.

(m) Not during bridge erection or installation, except for some time on the night of 8th January 1939.

MR. N. NARAYANA KURUP : With regard to the answer to part (g) may I know whether he has any practical experience ?

MR. M. K. NILAKANDA AIYAR : Yes.

MR. N. NARAYANA KURUP : How many years' experience.

MR. M. K. NILAKANTA AIYAR : I claim notice.

MR. N. NARAYANA KURUP : May I know whether the boat was examined with regard to its capacity to support the bridge ?

MR. M. K. NILAKANTA AIYAR : It is a licensed boat and every year boats are tested and examined before licenses are issued.

MR. N. NARAYANA KURUP : May I know whether before any load was placed on that boat the authorities examined the capacity of that boat ?

MR. M. K. NILAKANTA AIYAR : No, Sir ; every time a boat is used it is not examined.

MR. N. NARAYANA KURUP : With regard to answer to part (m) may I know whether Government are aware that through traffic of boats was not allowed for about a week ?

MR. M. K. NILAKANTA AIYAR : Government are not aware.

MR. M. SIVATANU PILLAI : May I know whether after the bridge came down, there was any damage to the wooden materials used for the construction of the bridge ?

MR. M. K. NILAKANTA AIYAR : There was absolutely no damage.

MR. M. SIVATANU PILLAI : Am I to understand that those materials could still be used for re-putting the bridge ?

MR. M. K. NILAKANTA AIYAR : Yes.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know whether the officer responsible for the construction of this bridge at Thottapalli is putting up the bridge with the same materials now?

MR. M. K. NILAKANTA AIYAR: Yes, the very same materials are being used.

New Bridge at Thottappally.

13. ***MR. K. P. KOCHUKORATHARAKAN**: Will the Government be pleased to state:

(*a*) whether they are aware of the breaking down of the new bridge under construction near the Thottappally Lock for transport purposes;

(*b*) whether they have made enquiries about the causes of the break down;

(*c*) if so, what was it due to, what loss the Government has to sustain thereby and the person responsible for it

(*d*) whether the said bridge was constructed of iron, cement, or timber subjected to ascu treatment, or by combining any of these materials and, if so, which of them proved defective; and

(*e*) whether any serious injuries or death has been caused to labourers or others at the time when the bridge fell down and, if so, the nature of the injuries and the number of persons injured or dead?

MR. M. K. NILAKANTA AIYAR: (*a*) The structure fell down.

(*b*) Yes. Further enquires are being made.

(*c*) One out of the two boats that were supporting one end of the bridge, which was being pushed across the channel, suddenly gave way during the night of the 8th January 1939 on account of the collapse of a plank at the bottam of one of the boats. About Rs. 3,000. There was nobody who could be held resposible for it, as it was accidental.

(*d* Essentially of teak and Ascu treated maruthi. The accident was not due to any defect in the meterials used on the bridge.

(*e*) There was no casualty or any case of serious injury whatever.

MR. K. P. KOCHUKORATHARAKAN: എത്രത്തോളംഭാരം താങ്ങുമെന്നുള്ളതിനെപ്പററി പരിശോധിച്ചു നോക്കേണ്ട ചുമതല ഉണ്ടായിരുന്നില്ലേ?

MR. M. K. NILAKANTA AIYAR: പരിശോധിക്കേണ്ട ചുമതല ഉണ്ടായിരുന്നു. പക്ഷെ ഇതു് യാദൃശ്ചികമായി അപകടം സംഭവിച്ചതാണു്.

MR. K. P. KOCHUKORATHARAKAN: ഉദ്ദേശിക്കുന്ന തരത്തിലുള്ള ഭാരം കയററത്തക്ക ശക്തി അതിനുണ്ടോ എന്നു പരിശോധിച്ചു നോക്കിയിട്ടുണ്ടോ?

MR. M. K. NILAKANTA AIYAR: ഇരുപതു ടൺഭാരം കയററാവുന്ന വള്ളത്തിൽ പതിനഞ്ചു ടൺ ഭാരമുള്ള പാലത്തിന്റെ ഒരു അററംമാത്രമെ കയററിയുള്ളു.

MR. K. P. KOCHUKORATHARAKAN: ഈ പാലത്തിനു വല്ലവരും കേടുവരുത്തിയിട്ടുള്ളതാണോ എന്നറിയാമോ?

MR. M. K. NILAKANTA AIYAR: അങ്ങിനെ ഒരു കേഴ്‌വിയുണ്ട്. അതിനെപ്പററി അന്വേഷിക്കുന്നുണ്ട്.

MR. K. P. KOCHUKORATHARAKAN: വള്ളത്തിന്റെ പലകയും മററും പൊളിഞ്ഞു കിടക്കുന്നതുകണ്ടാൽ കേടുവരുത്തിയതാണോ അല്ലയോ എന്ന് നിശ്ചയിക്കാമല്ലോ.

MR. M. K. NILAKANTA AIYAR: പ്രഥമദൃഷ്ടിയിൽ അതിനെപ്പററി യാതൊരു സംശയവും കാണുന്നില്ല. എങ്കിലും അതിനെപ്പററി അന്വേഷണം നടത്തുന്നുണ്ട്.

MR. K. R. NARAYANAN: കേടുവന്ന വള്ളം ഏതുകൊല്ലത്തിൽ പരിശോധിച്ചിട്ടുള്ളതാണെന്നറിയാമോ?

MR. M. K. NILAKANTA AIYAR: അതിനെപ്പററി അന്വേഷിച്ചിട്ടില്ല.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government whether any foul play was committed in connection with the fixing up of the exhibition bridge in Trivandrum during the Birthday week?

PRESIDENT: Order, order, order. We are now discussing the Thottapally bridge.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: It was a similar bridge.

Irrigation tanks in the Kalkulam taluk.

14. * **MR. C. JEBAMONY NADAR:** Will the Government be pleased to furnish in a tabular form the following information in regard to (a) the Thiruvithamcode channel area under the Kodayar project, (b) the area fed by the P. P. channel and (c) the "Miscellaneous system" under the Kodayar project;

(1) the names of irrigation blocks in the area;

(2) the area of each block;

(3) the average annual rainfall in each block for the last 15 years;

(4) the names of irrigation tanks (if any) in each block;

(5) the area of each of these tanks;

(6) the present condition of these tanks; whether they are maintained in full storage capacity or are silted up; and

(7) the distance of each of these blocks (along the channels) from the Pachipara reservoir?

MR. G. B. E. TRUSCOTT: Items (1), (2) and (4) to (7). A statement* furnishing the information required is laid on the Secretary's table.

(3) No rain gauge is fitted in each block and hence the information is not available.

MR. KOTTALIL P. ABRAHAM: May I know whether the boats were strong enough to support the load?

MR. M. K. NILAKANTA AIYAR: I believe the boats were strong enough to support the load. This is all I can say.

MR. P. SIVARAMA PILLAI: May I know whether they have incurred any additional expenditure due to this?

MR. M. K. NILAKANTA AIYAR: Yes.

MR. P. SIVARAMA PILLAI: How much?

MR. M. K. NILAKANTA AIYAR: About Rs. 3,000.

MR. N. NARAYANA KURUP: May I know whether the loading of one of a bridge in an ordinary canoe is an ordinary occurrence?

MR. M. K. NILAKANTA AIYAR: It is an ordinary occurrence if sufficient safeguards are provided.

MR. K. R. NARAYANAN: പകുതിഭാഗത്തിനു മാത്രമെ കേടു വന്നിട്ടുണ്ടായിരുന്നുള്ളോ?

MR. M. K. NILAKANTA AIYAR: അങ്ങിനെ അല്ല; ഒരു ഫ്ലോറായി ഉണ്ടാക്കി അതിലാണു വച്ചിരുന്നതു്.

MR. K. R. NARAYANAN: ഈ അപകടം സംഭവിച്ചതു് വള്ളത്തിന്റെ കുറ്റമാണോ അതല്ല പാലത്തിന്റെ കുറ്റമാണോ?

MR. M. K NILAKANTA AIYAR: വള്ളത്തിന്റെ കേടുകൊണ്ടാണു് ഈ അപകടം സംഭവിച്ചിട്ടുള്ളതു്.

MR. K. R. NARAYANAN: വള്ളങ്ങളെ ശരിയായി പരിശോധിക്കാത്തതിനു ആരാണു കുറ്റക്കാർ?

MR. M. K. NILAKANTA AIYAR: വള്ളങ്ങൾക്കു ലൈസൻസ് കൊടുക്കുമ്പോൾ ആണ്ടുതോറും അവയെ പരിശോധിക്കുന്നുണ്ടു. അങ്ങനെ ചെയ്കയല്ലാതെ ഓരോ അവസരത്തിലും പരിശോധിക്കുന്നതിനു ഒരിക്കലും സാധ്യമല്ല.

MR. K R. NARAYANAN: ഈ പാലത്തിന്റെ ഭാരംവഹിക്കത്തക്ക ശക്തി ആ വള്ളത്തിനുണ്ടോ എന്നു നോക്കുന്നതിനുള്ള ഉത്തരവാദിത്വം ആരിലാണ് സ്ഥിതിചെയ്യുന്നതു്?

MR. M. K. NILAKANTA AIYAR: ഇതിനുള്ള പ്രത്യേകമായ ഉത്തരവാദിത്വം ആരിലും സ്ഥിതിചെയ്യുന്നില്ല.

MR. K. R. NARAYANAN: ഇങ്ങിനെ സംഭവിച്ചതു നിമിത്തം ഉള്ള നഷ്ടം ആരിൽനിന്നുമാണു ഈടാക്കേണ്ടതു്?

MR. M. K. NILAKANTA AIYAR: ഇതു് യാദൃശ്ചികമായി സംഭവിച്ച ഒരു സംഗതിയായതുകൊണ്ടു് പ്രത്യേകമായി ആരേയും കുറ്റപ്പെടുത്തിയിട്ടില്ല.

Periakulam in Manavalakurichi pakuthy.

15. ✻ **MR. C. JEBAMONY NADAR**: Will the Government be pleased to state:

(a) the total extent of Periakulam (near Thalakulam village) in Manavalakurichi pakuthi, Kalkulam taluk;

(b) whether any portion of the tank has been silted up;

(c) whether the need for removing the silt has been brought to the notice of the authorities;

(d) whether any person has applied for registry of the silted up of the tank; and

(e) whether that application has been disposed of, and, if so, how?

MR. G. B. E. TRUSCOTT: (a) 144·55 acres.

(b) Yes. The foreshore area.

(c) Yes. There is no need to remove the silt as the *ayacut* have never suffered for want of water and the tank is always full.

(d) Yes.

(e) The application has been rejected.

MR. C. JEBAMONY NADAR: With reference to part (b) may I know the area silted up?

MR. G. B. E. TRUSCOTT: Sir, I am afraid I cannot give the information at the present moment.

Tube well in Eraniel.

16. ✻ **MR. C. JEBAMONY NADAR**: Will the Government be pleased to state whether the tube well investigation was conducted in the town of Eraniel?

MR. G. B. E. TRUSCOTT: Trial borings for tube wells have not been made in the town of Eraniel, in the light of the fact that almost all the wells in the private houses in the locality yield only brackish water and that water fit for cooking and drinking is available only in the wells near the edges of the paddy fields. In view of these facts, there was no object in trying tube wells in the brackish water area in the Town or in the fresh water area near the edges of the paddy fields, since in the light of the information obtainable and obtained from the existing wells, trial boring for tube wells would have been a superfluity. So, in the present investigation, it is proposed to provide a few "dug" wells near the adjoining paddy fields, that is to say, at the foot of the slopes, the other alternative, if these do not satisfy the needs, being to provide an infiltration gallery or wells in the bed of the Valliar and pump water therefrom to a balancing tank in the highest part of the town and distribute from there through pipes and street taps. This latter alternative (Pumping Scheme) requires detailed investigation.

Drainage survey in Eraniel.

17. ✻ **MR. C. JEBAMONY NADAR**: Will the Government be pleased to state:

(a) whether any survey had been conducted in the town of Eraniel for better and proper drainage; and

(b) the reason for conducting the same?

MR. G. B. E. TRUSCOTT: (a) Yes.

(b) With a view to improve the drainage condition of the Chetty street at Eraniel.

Appendix I.

Vide Answer to question No. 8

List of Public Wells maintained by the Public Health Department in Vilavankod taluk.

	Pakuthy.	*Number of wells.*	*Area of pakuthy (in acres.)*
1.	Painkulam	1	2257·87
2.	Methukummal	3	4779·01
3.	Kunnathoor	1	2384·16
4.	Kilmidalam	3	2329·26
5.	Midalam	6	3949·68
6.	Keelkulam	Nil	2583·85
7.	Killiyoor	4	5175·76
8.	Nattalam	5	4007·75

Appendix II.

Vide Answer to Question No 9 [47]

List of Agricultural and Veterinary Inspectors, in the Department of Agriculture and Fisheries.

Sl. No.	Name.	Caste.	Pay	Date of appointment.	Remarks.
	AGRICULTURAL INSPECTORS (I GRADE)		Rs.		
1	G. Sivarama Pillai	Nair	150	1-8-1085	
2	K. Subramonia Pillai	Nanjinad Vellala	150	1-7-1096	
3	T. C. Kochunni Pillai	Nair	150	20-7-1100	On other duty.
4	S. Rengaswamy Iyengar	Tamil Brahmin	150	5-10-1112	do.
5	M. C. George	Syrian Christian (Protestant)	75	1-1-1103	On probation.
	II GRADE.				
1	N. Narayanan Tampi	Nair	75	1-1-1103	On other duty.
2	V. Subramonia Pillai	Nanjinad Vellala	75	1-1-1103	do.
	P. Padmanabha Iyer	Tamil Brahmin	75	8-3-1106	do.
1	K. Krishna Pillai (Ag.)	Nair	50	12-8-1104	Temporary.
2	K. S. Nilakantam	do.	50	20-8-1104	do.
3	P. K. Krishna Pillai	do.	50	14-12-1107	do.
	K. R. Ramachandran Nair	do.	50	14-8-1112	Acting.
	P. O. Abraham	Syrian Christian (Marthomite)	50	25-12-1112	do.
	V. Narayanan Nair	Nair	50	22-2-1113	do
	O. C. Zachariah	Syrian Christian (Marthomite)	50	15-8-1113	do.
	M. Janardhanan Nair	Nair	50	13-8-1113	do.

APPENDIX II—(*contd.*)

Serial No.	Name.	Caste.	Pay.	Date of appointment.	Remarks.
	VETERINARY INSPECTORS (I GRADE).				
1	S. Sesha Iyengar	Tamil Brahmin	Rs. 150	1-3-1098	
2	M. Thandaveswara Iyer	Do.	Rs. 150	Do.	
3	G. Nanu Pillai	Nair	Rs. 150	1-1-1103	
4	A. Krishna Pillai	Do.	Rs. 150	5-10-1109	
5	T. K. Govinda Pillai	Do.	Rs. 150	4-5-1110	
	(II GRADE.)				
1	V. Thanuvan Nair	Nair	Rs. 75	1-1-1103	
2	P. K. Kesavan	Ezhava	Rs. 75	Do.	
3	K. Madhavan Nair	Nair	Rs 75	20-12-1112	
4	K. Raman Pillai	Do.	Rs. 75	1-1-1103	
5	C. A. Mahadevan	Tamil Brahmin	Rs. 75	Do.	
6	B. Janardhana Iyer	Do.	Rs. 75	18-9-1104	
7	S. Venkita Raju	Hindu Kshatriya	Rs. 75	18-3-1105	
	M. K. Pappoonni Pillai	Nair	Rs. 50	25-1-1113	Temporary.
	T. K. George	Syrian Christian	Rs. 50	9-9-1113	Acting.
	G. Balakrishnan Nair	Nair	Rs. 50	24-9-1113	Temporary.
	K. N. Nair	Do	Rs. 50	6-10-1113	Do.
	G. Raghavan	Ezhava	Rs. 50	25-3-1114	Acting.

ADJOURNMENT MOTION.

PRESIDENT : I have received notice of a motion for adjournment from Mr. Narayanaperumal Nadar.

It is—

"to discuss a matter of urgent definite public importance, namely, the situation created among the Puduval Cultivators of the area commanded by the Kodayar Project, owing to the coercive process adopted for realising water tax for 1113, though a large portion of the said area remained fallow (tharisu)."

It will be noticed by honourable members that on the opening day various adjournment motions were submitted to the Chair according to the uniform rule and that this particular notice of adjournment motion was not submitted to the Chair. Therefore, on that ground alone it would be inadmissible. Moreover, there is another point to be mentioned, namely, that in an adjournment motion which has been submitted and admitted, sponsored by Mr. Sivathanu Pillai, the question of the last Kanni crop and thousands of acres lying fallow for which tax for Kanni is being collected on the ground that fallow remissions are not contemplated, practically the same question arises. So that this matter contemplated by Mr. Narayanaperumal Nadar will be within the competence of the House to discuss on the adjournment motion this afternoon. Therefore it is both inadmissible and superfluous and I rule it out.

MR. PUTHUPALLY S. KRISHNA PILLAI (*Legal Remembrancer*) : Sir, in explaining the principles involved in the Insurance Bill, I pointed out yesterday how the Bill proposes to deal with the Provident Insurance Societies in the State. I shall now deal with the other important aspects of the Bill. After the Travancore Life Assurance Companies Act came into force one defect was noticed. When the Travancore companies are, under the provisions of that Act, bound to get themselves registered and to make the deposit contemplated by that Act, non-Travancorean companies are altogether able to escape the provisions of the law provided such companies are British Indian companies or United Kingdom companies. The only thing that those companies should do is to make a declaration that they are either of British Indian origin or of English origin. The Life Assurance Companies Act was modelled on the corresponding British Indian Act and the same difficulty that we now feel here was felt in British India. There United Kingdom companies could escape the provisions of the British Indian Act by a mere declaration. Whereas Travancore companies are compelled or are compellable to register themselves under the Act and make a deposit, all other companies become entitled to claim exemption from the operation of the Act. The majority of the life assurance companies working in the State are non-Travancorean. I may even say that so far there is not a single company formed under the Travancore Life Assurance Companies Act. Of course, the

same thing has happened in British India also. The proposal is therefore made that no life assurance company shall carry on any life assurance business in the State without its being registered under the provisions of the Act and when registration is made compulsory the company will also be compelled to make the deposit. We are therefore proposing to treat all life assurance companies alike, whether Travancorean or non-Travancorean. In regard to non-Travancorean companies carrying on insurance business there are certain provisions which will remove any hardship that might otherwise arise.

The Bill also deals with insurance agents. Every honourable member of this House knows what troubles and difficulties one may have in dealing with insurance agents. One day one man may come forward and say that he is an insurance agent and might book your application, receive an advance and then walk away. He may not thereafter be seen or heard at all. It may be that you might be paying some money to an insurance agent. You do not know what has happened to that money until you hear from the company that no amount has been remitted towards the last premium which fell due three months before. Such cases are not very rare and therefore it is proposed that no insurance agent shall carry on insurance canvassing business unless he has obtained a license therefor.

At the same time the Bill does not propose to deal with them without any mercy. Special provision is made for the benefit of agents who have been working for 10 or more years. It is provided that in case of termination of his services, he shall be entitled to get compensation. According to the existing law, policies are deemed to be issued from a place where the head office of the company is situated which is mostly outside Travancore. The company that carries on flourishing business in Travancore invariably takes care to see that such policies are issued from the head office. By so doing, policy holders who make payment in Travancore are very often put to the necessity of enforcing their claims in foreign countries. Provision is made that if the policy is issued to one in Travancore, a suit on that shall be maintainable in Travancore. Provision is also made that any question of law arising in connection with any such policy shall be determined according to the law in force in Travancore. It is not open to the company to say that, under the law of the land where the company was incorporated or where the head office was situated, a claim put forward in this State shall not be maintainable. It has been found that this method of evading payment of claims made by the insurers after maturity of their claims has been working to the detriment of the insurers in the State. A special provision, therefore, to safeguard their interests has been made. Obligation is cast on the insurers to inform policy holders when their policies lapse. It is also provided that in the case of insurance companies a proportion of the directorate shall be filled up from amongst policy holders.

Mr. Puthupally S. Krishna Pillai.]

As the existing laws are applicable only to life insurance business, it is proposed that this bill should comprehend all insurance business, whether it be fire insurance, or marine insurance or any other kind of insurance. It is also proposed to bring within the ambit of this Bill the class of insurers called Lloyd's underwriters who are carrying on insurance business extensively in the State.

It is proposed to prohibit the employment of managing agents. In the Travancore Companies Act, a provision has already been made prohibiting the employment of managing agents. Similar, but more drastic, provisions are made in this Bill for the purpose of doing away with the managing agency system in insurance business. A special provision has also been made to deal with mutual insurance companies and co operative insurance societies.

It is hoped that when this Bill is enacted into law, it would enable us to deal fully and effectively with insurance business in the State. I move that the Bill be read in the Assembly.

MR. M. P. JOSEPH: I second it.

The motion was put and carried.

The Secretary to the Sri Mulam Assembly then read the title of the Bill—

"The Travancore Insurance Bill."

MR. PUTHUPALLY S. KRISHNA PILLAI: I move that the Travancore Insurance Bill be referred to a Select Committee consisting of the following members:—

Mr, Kotalil P. Abraham.
Mr. P. C. Adichan.
Srimati Devaki Antherjanam.
Mr. John Joseph.
Mr. K. C. Karunakaran.
Mr. S. Krishna Iyer.
Mr. N. Ramakrishna Pillai.
Mr. P. Sivarama Pillai.
Mr. N. Narayana Kurup, and
The Legal Remembrancer.

MR. M. P. JOSEPH: I second it.

MR. PUTHUPALLY S. KRISHNA PILLAI: The Select Committee will report within 3 months.

PRESIDENT: The honourable member may be aware that the budget meeting comes off in July. There would probably be a meeting Before that when it would be useful to have all the commercial bills passed so that we might become up-to-date in regard to our commercial legislation. The Legal Remembrancer might consider that.

MR. PUTHUPALLY S. KRISHNA PILLAI: The Select Committee would try to present their report even before three months.

The motion that the Select Committee consisting of the above members be appointed to consider the Bill was then put and carried.

THE TRAVANCORE CONTRACT BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to introduce the Travancore Contract Bill. In the Statement of Objects and Reasons I have pointed out what exactly is the implication contained in the Bill. Our courts have been following, in most cases, the provisions of the Indian Contract Act. In some cases our courts have made departures, of course, basing their decision on the English law of contracts. Wherever they have done so, they have stated that the decision is in consonance with justice, equity and good conscience. It is found after careful consideration of all these decisions and a comparative study of the provisions of the Indian Contract Act that it would be better to have uniformity and definitness in matters arising under contract. Therefore, in preparing this Bill, the provisions of the Indian Contract Act have been followed. The Bill when enacted into law will mark a divergence in regard to the law relating to contracts in one or two respects. For instance, the law relating to contracts without consideration but made out of natural love and affection and the revival of a barred debt. It may be noted that such special provisions will apply only to contracts that will come into existence after the passing of the Act. Honourable members are aware of the provisions of the Indian contract Act and I do not therefore propose to deal exhaustively with the provisions contained in the Bill. The only thing that I wish to point out is that some of the chapters of the Indian Contract Act have been repealed and re-enacted as separate statutes. The chapters dealing with 'sale of goods' and 'partnership' have been repealed and a separate Sale of Goods' Act and a Partnership Act have been enacted. Along with the Contract Bill, separate Bills relating to Sale of Goods and Partnership have been prepared and are submitted for the consideration of the House. The absence of a Statute Law relating to contracts has been keenly felt by members of the profession and the litigant public. This Bill, it is hoped, will satisfy a badly felt need. I now move that the Bill be read in the Assembly.

MR. M. P. JOSEPH: I second it.

PRESIDENT: The idea underlying many of these Bills coming up before the House is that in view of the growth of trade and commerce and in view of the many reactions that are taking place outside, it is well to bring our commercial laws also up-to-date.

The motion was put and carried.

The Secretary to the Assembly then read the title of the Bill:—

"The Travancore Contract Bill".

MR. PUTHUPALLY S. KRISHNA PILLAI : I beg to move that this Bill be referred to a Select Committee consisting of the following members —

Messrs. E. Subramonia Iyer
M. L. D'Cruz
C. Jebamony Nadar
M. L. Janardhana Pillai
N. V. Joseph
M. Kesava Panicker
T. C. Kesava Pillai
M. Sivathanu Pillai
Puliyoor T. P. Velayudhan Pillai
Dr. C. R. Harler, and
The Legal Remembrancer,

the Committee to report within three months.

MR. M. P. JOSEPH : I second it

The motion was put and carried.

THE TRAVANCORE SALE OF GOODS BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI : I beg to introduce The Sale of Goods Bill. I may be permitted to point out that this has been drawn up on the lines of the British Indian Act. We have been generally following British Indian Law. By the enactment of this Bill we shall be making a departure on one or two points from the current of judicial decisions based on the principles of justice, equity and good conscience. One relates to the administration of partnership property on dissolution and the other in the matter of registration of partnership firms. Of course, it is not proposed to make the provision obligatory. A separate period also is provided for the coming into operation of the section. One point to be noted is that our courts sometimes rely on the Indian Contract Act for certain purposes and the English Act or the American system of jurisprudence for certain others. A desultory search for laws and principles, keeps the law and legal rights and obligations unsettled. It is proposed to bring about definiteness in these matters as far as possible. It is hoped that this measure also will contribute towards the achievement of that purpose. I move that the Bill be read in the Assembly.

MR. M. P. JOSEPH : I second it.

The motion was put and carried.

PRESIDENT : I may say in passing that the Sale of Goods Act and the Partnership Act have been drafted with the aid of very brilliant legal talents in British India and they have taken advantage not only of the best legal talents in British India but even of outside. I think it will be safe to follow the example of British India.

The Secretary to the Sri Mulam Assembly then read the title of the Bill—"The Travancore Sale of Goods Bill."

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that the Travancore Sale of Goods Bill be referred to a Select Committee consisting of the following members:

1. Sahib Bahadur V. Chandamiah
2. Mr. S. Chattanatha Karayalar
3. Mr. John Joseph
4. Mr. K. C. Karunakaran
5. Mr. T. T. Kesavan Sastri
6. Mr. Mathai Chemparathy
7. K. Narayanaperumal Nadar
8. Mr. K. R. Narayanan
9. Mr. Puliyoor T. P. Velayudhan Pillai
10. Mr. S. Narayana Pillai, and
11. Mr. Puthupally S. Krishna Pillai,

to report within three months.

MR. M. P. JOSEPH: I second it.

The motion was put and carried.

THE TRAVANCORE SPECIFIC RELIEF BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to introduce the Travancore Specific Relief Bill. As many of the honourable members are aware, this is intended to operate as a supplement to the provisions contained in the Civil Procedure Code. The absence of a statute relating to this matter was not infrequently felt by courts in deciding cases relating to specific relief. For such purposes our courts have been relying on the Indian Specific Relief Act. The Indian Specific Relief Act contains the principles of the decisions of courts of equity in England. The notes on clauses will explain what exactly are the implications contained in the several clauses of the Bill. I have carefully gone through the several decisions of our courts bearing on specific relief and I may assure the members that the principle embodied in the several provisions of the Bill have been adopted and acted upon by our courts. I beg, Sir, to move that the Bill be read.

MR. M. P. JOSEPH: I second it

MR. E. SUBRAMONIA AIYER: So far as the Specific Relief Bill is concerned, as was pointed out, our courts, no doubt, grant the reliefs contemplated by this Bill. I, for one, feel that the power of the courts to mould their procedure to afford the appropriate relief in an individual case should not be limited by hard and fast rules. This Bill admittedly has very little to do with commercial business. The reasons which would apply to all the other Bills now before this House do not strictly apply to this Bill.

PRESIDENT: I take it that what may be called the inherent powers of courts are preserved. So, on that point there need be no apprehension in the minds of a trained lawyer like Mr. E. Subramonia Iyer and others.

MR. E SUBRAMONIA AIYAR: I am coming to that. They do not take away the inherent powers of the courts. Curiously enough I do not find a provision in the Bill similar to Section 45 of the Act in British India. Sooner or later, we may become a unit in the Federation and we will have something to do with the Federal Courts. The powers vested in public authorities may require supervision by some judicial authority. In extraordinary cases it may be vested in the High Court as it is done in other places. That does not mean that I oppose the principle of the Bill. I am only pointing out that if we are going to have such a Bill I would suggest that this matter may be taken into consideration at the further stages of the Bill. I am only taking advantage of this occasion to point out to the House that more powers may be vested in the High Court than those that exist at present. Particularly to my mind it appears that the power to compel public authorities to do the duty which may be imposed upon them by Statute, must in the modern state be vested in the highest court of the land.

PRESIDENT: I do not wish to speak on technical legal matters, but I must say that Mr. E. Subramonia Aiyar was justified in many of his observations. I take it that one of the objects of our legislation will be to extend the jurisdiction of the High Court so as to make it an effective instrument for meeting justice. The Specific Relief Act itself was a part of the equitable jurisdiction and as the speaker who has just now sat down knows the jurisdiction varied with the length of the Lord Chancellor's foot, this maxium meaning that it was a discretionary jurisdiction. There is a great deal of necessity in this country especially in view of the possible coming events that there should be a machinery by which the tasks performed by the origina sides of the Chartered High Courts should be performed by our High Court such as the right to issue writs of *Mandamus and Certiorari* and so forth. These are matters which the Select Committee will keep in mind. To do so will, however, diverge beyond the fundamental principles of the Bill. I am sure that the trained intelligence of this House will be available for that purpose.

The Secretary to the Sri Mulam Assembly then read the title of the Bill—"The Travancore Specific Relief Bill."

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that the Travancore Specific Relief Bill be referred to a Select Committee consisting of the following members:

1. Mr. E. Subramonia Aiyar
2. Mr. S. Chattanatha Karayalar
3. Mr. M. L. D'Cruz
4. Mr. N. V. Joseph

5. Mr. C. Jebamony Nadar
6. Mr. K. P. Kochukora Tharakan
7. Mr. K. R. Narayanan
8. Kainikkara M. Padmanabha Pillai
9. Kotiveettil C. Raman Kunju
10. Mr. P. Vivekanandam, and
11. Mr. Puthupally S. Krishna Pillai

to report within three months.

The motion was put and carried.

THE TRAVANCORE PARTNERSHIP BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to introduce the Travancore Partnership Bill. As I have already stated this Bill is drawn up on the lines of the corresponding British Indian Act. In this connection it may be stated that on one or two points our High Court have departed from the principles formerly contained we followed the English Law in preference to the Indian Act in the Indian Contract Act. When the British Indian Partnership Act was enacted they adopted the principle which has been accepted by our High Court. The British Indian Partnership Act was drawn up on the lines of the English Act and the English Act is becoming the model of all commercial countries. Most of the American States have enacted legislation on the lines of the English Act and it is thought therefore necessary that we should also fall into line with the other legislatures and enact a law which is not at variance with the law elsewhere. I move, Sir, that the Partnership Bill be read in the Assembly.

MR. M. P. JOSEPH: I second it.

The Secretary to the Sri Mulam Assembly then read the title of the Bill—"The Travancore Partnership Bill."

MR. PUTHUPALLY S. KRISHNA PILLAI; Sir, I move that the Travancore Partnership Bill be referred to a Select Committee consisting of

Messrs.

1. E. Subramonia Iyer
2. V. Chandamiah
3. P. C. Adichan
4. E. E. Pandarathil
5. D. Francis
6. M. L. Janardanan Pillai
7. M. Kesava Panicker
8. S. Narayana Pillai
9. Puliyoor T. P. Velayudhan Pillai
10. Dr. C. R. Harler, and
11. Mr. Puthupally S. Krishna Pillai

to report within three months.

MR. M. P. JOSEPH: I second it.

The motion was put and carried.

THE TRAVANCORE ARBITRATION BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to introduce the Travancore Arbitration Bill. Disputes arising in commercial transactions should, as far as possible, be decided by arbitration. It is not in the interest of the commercial community that they should be driven to the courts for settling their disputes. There is some provision relating to this contained in the Civil Procedure Code. But it is inadequate to meet cases contemplated by this Bill. This Bill also like the other Bills has been drawn up on the lines of the British Indian Act. Decided cases on this matter could not, as honourable members know, be availed of for the purpose because there is no statutory provision enabling such arbitration proceedings to be started and enforced. Apart from the Civil Procedure Code we have no other law relating to Arbitration. The provisions of the Civil Procedure Code are inadequate for the purpose. If parties agree that in case of any dispute it must be referred to arbitration, there must be statutory provision for compelling one or other to conform to the agreement. I move that this Bill be read in the Assembly.

MR. M. P. JOSEPH: I second it.

The motion was put and carried.

The Secretary to the Sri Mulam Assembly then read the title of the Bill —"The Travancore Arbitration Bill."

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that the Travancore Arbitration Bill be referred to a Select Committee consisting of

Messrs.

1. S. Krishna Iyer
2. N. Narayana Kurup
3. T. T. Kesavan Sastri
4. Thariathu Kunjithommen
5. K. Narayanaperumal Nadar
6. R. Narayanan Namboori
7. Srimati T. Narayani Amma
8. N. Ramakrishna Pillai
9. P. Sivarama Pillai
10. Dr. C. R. Harler and
11. Mr. Puthupally S. Krishna Pillai,

to report within three months.

MR. M. P. JOSEPH: I second it.

The motion was put and carried.

THE TRAVANCORE EQUITABLE MORTGAGE BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to introduce the Travancore Equitable Mortgage Bill. It is a one-clause Bill but marks an important era in the history of legislation in Travancore. It has

been the uniform practice and the accepted rule of law that no person shall be entitled to claim or get a charge on immovable property unless that charge was created under a document in writing duly registered. Though in theory oral sales and mortgages are not invalid, in practice the rule is as I have stated. Government have been receiving memorials and resolutions passed by the mercantile community in the State that the absence of a legislation enabling the creation of charges on immovable properties by deposit of title deeds is a serious handicap. The matter has been duly considered by the Government and they have thought that a Bill like this might be brought forward for consideration by the Assembly. It is provided in clause 2 that such rights and liabilities shall be enforced in the same manner as the rights and liabilities under an hypothecation deed. What an hypothecation deed is and what the rights and liabilities are, are well known to all the members of the legal profession and also all the other honourable members of this House. According to this Bill such equitable mortgages can be brought into being only within the municipal areas mentioned in clause 1 of the Bill. It is within the powers of the Government to extend the operation to non-municipal areas as well. But at present it is proposed to confine the operations only to the municipal areas mentioned in the Bill.

PRESIDENT: You may make it clear that the provision will apply to disputes arising within the Municipalities even though the properties may lie outside.

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes, Sir. That, I submit, is a matter covered by judicial decisions. People conversant with the law relating to this matter know that the properties need not be within the municipal areas but only the transaction need be within the municipal area. I have already pointed out that the title deed must be deposited for the purpose of creating a charge.

MR. KOTTALIL P. ABRAHAM: Is it contemplated under this Bill that there should be any sort of rules for writing title deeds?

MR. PUTHUPALLY S. KRISHNA PILLAI: It is not contemplated in this Bill. The creditor who receives the deposit of the title deeds will always see that the deed is deposited for the purpose of creating the charge. Members of the profession who are conversant with the methods elsewhere can clearly understand this. Some memorandum, some writing, some letter is taken for the purpose. More than that is not necessary.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: It is not a matter of evidence?

MR. PUTHUPALLY S. KRISHNA PILLAI Yes, it is purely a matter of evidence. I therefore beg to move that this Bill be read in the House.

MR. M. P. JOSEPH: I second it.

MR. S. KRISHNA AIYAR. Sir, I would like to make a few observations on this Bill. No doubt there are difficulties; for example an attachment may be placed on property and the decree holder who placed the attachment may not be in a position to know that equitable charges have been created as it is not possible for him to get any information or notice. Nevertheless, this measure would be of great help to the mercantile community and the banking world in particulars. There are very many merchants in Alleppey and other places who do want accommodation and who may be prepared to charge their properties but who mights find that when once a charge is created the credit has vanished. Such merchants will find it a very great help if this Bill is brought into effect. There are also small bankers who may be prepared to deposit title deeds for advance from larger banks without impairing their credit. With reference to the Travancore Credit Bank there is absolute necessity for a legislation of this kind. From all over Travancore people come forward for long term loans on landed security. The learned Legal Remembrancer has said that it does not matter whether the property is outside municipal areas or not. It is enough that the transactions take place in the capital where the Credit Bank functions. But here again difficulties might supervene. But on the whole the Bill is very advantageous to the commercial world.

MR. J. E. A. PEREIRA: Sir, this Bill, although a brief one, will have far-reaching effects in the commercial world. Equitable mortgage can and ought to find a place in all progressive countries, but the question is whether this is suited to this country under prevailing conditions. Here, the ownership of land is subject to lawsuits of various complexity, and under such conditions whether equitable mortgage is suitable to this country. I fear that in the hands of designing people it will prove a very handy tool to defeat the creditors.

PRESIDENT: Is the honorable member aware that in Travancore to day oral mortgages are possible?

MR. J. E. A. PEREIRA: No, Sir.

PRESIDENT: They are.

MR. J. E. A. PEREIRA: I have my own doubts as to the suitability of equitable mortgages to the conditions prevailing here.

Before this important Bill finds a place in the Statutes, I would plead that it should be studied carefully in the Select Committee to find out the necessary safeguards in order to make it suitable to local conditions.

MR. E. SUBRAMONIA AIYAR: Sir, so far as Travancore is concerned, for any transfer of immovable property, no form is prescribed. I should very much like to see some provisions made which will prescribe suitable rules relating to the transfer of immovable properties. In British India they have got the Transfer of Property Act, and in the matter of sales, mortgages, exchanges, sales etc. writing and

registration are prescribed. But in Travancore we have no such law and oral mortgages and oral hypothecations may also be had. So, if we are going to create a charge on property in an expeditious manner without going through certain formalities, I do not mean to say that this is an innovation in Travancore. In England, mortgage was effected by way of a legal conveyance and so much so the first mortgagee became the owner of the property and not the mortgager; and I do not propose to deal further with the law in the matter at this stage.

The equitable mortgage came when in pursuance of an agreement to execute a legal conveyance the title deeds were handed over and the money was taken the equity courts said even if the conveyance was not subsequently executed that what ought to done may be treated as having been done. There was the Statute of Frauds in England that every transaction relating to land must be in writing. Nevertheless the chancery Courts in England accepted mortgage by diposit of title deeds on what is called the doctrine of part-performance.

In 1925, there was a law of property reform in England, the famous Lord Brikenhead's Act. Every student of law knows that so far as the law relating to landed property in England as concerned the law was highly techinical and complicated and it was given to Lord Birkenhead to come to the rescue of the Englishmen and put the law on a simplified basis. Even in that Act this kind of equitable mortgage was left untouched. It may be urged that this form of mortgage can be adopted in Travancore as well because the commercial transactions may require charges being created on immovable property in an expeditious way. At the same time we should take care to see that no opportunities are given for the commission of fraud or forgery. Certainly in the further stages of the Bill those matters may be taken into account.

Another matter I should emphasise is that it is better to take away the name "Equitable Mortgage Bill," because difficulties may crop up. If we make it the law in Travancore that the mortgage of land can be made by simply depositing the title deeds with the person who advances money with the intention of creating a mortgage, it is highly necessary that care should be taken to prevent fraud in transactions relating to law. As the Legal Remembrancer pointed out, generally, a memorandum or some writing may be taken in that behalf. When you take a memorandum or some writing and if it contains anything more than what is necessary, the rule of registration may come into operation. Anyhow, if the House thinks that Travancore requires the creation of a charge on immovable properties by this method I should suggest that we should make it clear that every transaction relating to land shall be in a particular form and make this an exception.

Now there is the Registration Act. It merely says that if the transaction is in writing it should be registered. It does not say that the transaction must be in writing. So, I should request the Government to introduce a piece of legislation in Travancore that any transaction relating to land, whether it be by way of sale, mortgage or any other form, shall always be in writing with certain definite exceptions.

Another suggestion that I would make is that the remedies under a mortgage be made most effective. So, I would request the House to consider whether we shall not make a complete law relating to mortgage. So, these matters should be taken into consideration by the House in accepting the principle of the Bill.

MR. S. CHATTANATHA KARAYALAR: Sir, I have great pleasure in welcoming the principle embodied in the one clause Bill placed before the House. But, Sir, I am sorry that as the law of the country recognises oral transfers, sales, mortgages, etc. this Bill will be rendered infructuous in practice. I fear that in the actual working of the Bill if it is passed into law, difficulties of a serious nature may arise. Mortgages by oral transactions are recongnised by law and will continue to be perfectly valid in law even if the Bill becomes law. This state of affairs will surely pave the way for a good deal of fraud and thereby hinder commercial transactions.

PRESIDENT; I think the Legal Remembrancer will explain the position.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, the question of preparing a Bill which will cover all laws relating to the transfer of properties is under the consideration of Government. And the Law Department has made headway with that work and it will be published in the Gazette in due course. In order that a complete round of commercial laws may be framed this Bill was prepared and it is only the beginning of what is to follow. If the members think that this will be a means for defrauding honest people I can only answer that this Bill does not contemplate dishonest people but only honest people of the commercial world. For instance, a person has entered into a transaction on his personal credit with a bank and he has drawn an amount of, say, Rs. 20,000. The bank at a moment's notice demands repayment.

MR. E. P. VARGHESE: It is not always evidenced in writing, such loans and advances?

MR. PUTHUPALLY S. KRISHNA PILLAI: A question like that from an honourable member like Mr. E. P. Varghese gives me no small surprise because this is one of the most important principles contained in the Transfer of Properties Act which both myself and himself have studied. What is there when the law says. "no, it need not be evidenced in writing"? Evidence in writing is created for the purpose of showing that the document has been pledged. To that extent, an evidence in writing may be of help to the person who takes the pledge. Otherwise, an unscrupulous debtor may say that he borrowed the document from him to see whether the properties involved could be purchased. So that the person who wants to get a security will also see that some letter or writing is taken from him in which he says that the document is sent on to him for such and such purpose. I refer to Mulla's Transfer of Property Act.

MR. E. P. VARGHESE: We have not enacted the Transfer of Propecty Act.

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes, yes, but we have made provision for equitable mortgages. The members have been pointing out that under the existing law oral sales and oral mortgages are permissible. But I ask how many honourable members of this House have taken oral sales and mortgages. As members of the profession I put it straight to them. And how many of these oral sale cases have been upheld by our courts. You can say in theory that the sale need not be evidenced by writing registered, because there is no enactment corresponding to the Transfer of Property Act. But how many sales have taken place under the oral system which has been now put forward. After all, there is no law which demands that the sales shall be in writing, and therefore, a bill of this nature will not come as a surprise. This goes one step in check of the existing law. If when you say that a mortgage can be created orally, if when you say that a sale can be created orally, people are not frightened, why should you fight shy of a law which demands that an oral mortgage shall be evidenced by the possession of the title deed of the properties mortgaged? In British India this is the law; in Cochin this is the law: in Mysore there is a law similar to this and it does not stand to reason that we should not have a similar law enabling men to enter into honest commercial transactions.

PRESIDENT: It is not with a view to supplement what has fallen from eminent legal gentlemen that I wish to say a few words before this matter is moved. My only excuse for making this exposition is that I have had probably more experience than most honourable members of this House in dealing with this particular form of mortgage because a large portion of the transactions dealt with on the original side in the Madras High Court has reference to this form of mortgage

Let me make one or two matters perfectly clear. In Travancore to-day there is no Transfer of Property Act. As has been pointed out by Mr. E. Subramonia Iyer, the Registration Act merely says that if there is a document of a certain kind or category it must be registered. It does not lay down that sales or mortgage or exchanges or leases in writing must be registered. If there is to be the sale it must be registered. The Transfer of Property Act in British India lays down that there can be no sale of the property involving a certain amount unless there is a registered document. There can be no lease of a certain type unless there is a registered document. That law, we have not got here. I think it is time that that matter is very carefully looked into, and I may assure honourable members that Government are bestowing attention on this subject, so that a Bill will shortly be placed before the honourable members, for the purpose of considering the need of providing for compulsory writing and compulsory registration as necessary for the purpose of creating certain legal results. Nobody can be sure of the title of a person to property unless the history of the property is perfectly clear. In England a great deal of the money that was earned by the great authorities on Real Property during four hundred or five hundred years, has been due to the uncertainty and complexity of the law relating to land.

[President.]

In certain commercial centres, money is needed and it is needed only for a short time, say for ten days. If a bank or an individual wants to lend the money, he takes the title deed. He then sees the encumbrances which are registered. If there are no previous transactions relating to this property he lends the money. This equitable mortgage is evidenced by a document recording that previous transactions have been entered into. This document may or may not be registered. That is a matter which the honourable members have to consider in the Select Committee. I also want honourable members to bear in mind that this legislation must not be taken as a sporadic or piecemeal legislation. It must be dealt with in conjunction with the Transfer of Property legislation and if the Legal Remembrancer would make it clear, that will be brought into operation simultaneously with the other laws. In the transactions of the Credit Bank a tremendous amount of delay takes place because of the requisite formalities. The object of this Bill is to facilitate commercial transactions without undue publicity or delay.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, when this bill itself was drafted, the intention was that it should be brought into operation only at such time as Government considered it proper or feasible. In clause I, in this Bill, unlike any other bills, it is specifically provided that "it shall come into force at such time as is notified in the Government Gazette". Ordinarily, the operative clause is left blank; but in this particular case, in order that the House may be quite sure of that fact, sub-clause (c) provides that it will come into operation only when the Government notifies in that behalf. As I have stated, a comprehensive legislation dealing with all transfers of immovable properties is under contemplation and it is hoped that at the next sitting of the Assembly such a bill will be introduced. In the meantime, the principle involved in this Bill, as I pointed out, is a principle which has been accepted throughout British India and in all the important states.

I have brought forward about seven other bills, all relating to commercial matters. This Bill will complete the round of bills enacted for the purpose of safeguarding the interests of commercial men. Our people are still afraid of the dishonesty and unscrupulousness of the men around them. In this piece of legislation we are not making a large divergence from the law that is already existing. As pointed out by Mr. E. Subramonia Aiyar, the sale or a hypothecation may be made by word of mouth, but how many of our people have been able to get oral hypothecations of immovable properties? This goes one step further, and gives sanctity to such transactions which are evidenced by the possession or the delivery of the title deeds. We are not doing anything more. We are only more conservative in this respect. You say that now while sitting in this House you can mortgage your immovable property. I say that you should not do anything so absurd as that but that you must

go home, get your title deeds and at least pledge them before you complete the transactions. That is all what is said here. It may probably be in restraint of your present freedom, but I say that there must be at least this restraint. I therefore move that the Bill be read in the Assembly.

MR. M. P. JOSEPH: I second it.

PRESIDENT: Any other honourable member wishing to speak?

MR. JOSEPH VITHAYATHIL: I concede that there is a necessity for having a legislation of this nature in the interests of the commercial people. But we have to guard against possible acts of fraud. You may hand over your documents to the professional document writers and these people may deceive you by handing over these title deeds to others and creating evidence of false pledges. There is also another matter to be considered. If you chance to lose your title deed, there is no likelihood of your getting any amount on the security of your immovable property. No one will be satisfied with a certified copy of the title deed.

PRESIDENT: Invariably this is the result wherever there is this form of mortgage existing.

MR. JOSEPH VITHAYATHIL: My suggestion is that the commercial people who want to take advantage of the provisions of this enactment should have their names published in the Government Gazette beforehand, or should have their names entered in special registers to be kept for the purpose in the areas to which the Act is applicable. Such a provision will be an effective check on fraud being practised, and it will at the same time enable people who happen to lose their title deeds to raise loans on the security of their properties.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I believe, all these matters can be considered by the select committee and if any further safeguard is necessary in this matter it may be made by the select committee. I have no objection to that course.

The motion was put and carried.

The Secretary to the Srimulam Assembly then read the title of the Bill "The Travancore Equitable Mortgage Bill".

MR. PUPHUPALLY S. KRISHNA PILLAI: Sir, I beg to move that the Travancore Equitable Mortgage Bill be referred to a Select Committee consisting of Messrs.

(1) S. Krishna Aiyar,
(2) N. V. Joseph,
(3) E. E Pandarathil,
(4) Kaviyur K. K Kochukunju,
(5) P. Narayana Pillai,
(6) M. Sivathanu Pillai,
(7) Joseph Vithayathil,
(8) Kainikkara M. Padmanabha Pillai,
(9) M. Ramiah Pillai,
(10) Srimathi T. Narayani Amma, and
(11) The Legal Remembrancer, to report within three months.

The question whether the Bill be referred to the Select Committee consisting of the above mentioned members was put to vote and carried.

The Bill was accordingly referred to the Select Committee.

THE TRAVANCORE TELEPHONE BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I beg to introduce the Travancore Telephone Bill.

Honourable members are aware of the fact that last year, during the budget debates, this House was called upon to vote in favour of the opening and establishment of the trunk telephones in Travancore. The work was commenced and the only difficulty that we now find in the matter is the absence of proper legislation enabling the work to be carried on. The work is likely to be finished very soon: at the same time, it is necessary that we should have certain statutory protection in regard to its working. This Bill is therefore proposed. As pointed out in the statement of objects and reasons, part I of the Bill deals with definitions. Part II deals with the privileges and powers of Government. It is stated that so far as the operation of telephones in the State is concerned Government should have complete control over the system and no private individual will be permitted to have telephone service unless he has a license or permit issued by the Government, just as in the case of electric installations. Naturally, Government have reserved the power to suspend, to stop or to intercept telephone communication, when in any emergency public interests demand such a course of action.

I may also mention that if, in connection with the installation, damage is done to private property, provision is made for paymat by Government. Of course, there are provisions for the punishment of persons who meddle with telephone apparatus or tamper with the wire or disturb the connectin. As the House is aware, these provisions are absolutely essential for the proper working of public utility services like the telephone.

I beg to move that the Bill be read in the Assembly.

MR. M. P. JOSEPH: I second it.

DR. C. R. HARLER (*Planters*) : Sir, I welcome this Bill in that it marks a step forward in the development of the State.

In the High Range, we have a complex telephone system extending from Bodinayakanur, through Top Station into Travancore, on to Munnar and then down to Pallivasal in one direction, and to Vagavurrai in the other. The system probably covers fifty miles; we have two exchanges and about a hundred phones.

Sir, Section 3 of the Bill provides that the Government will have power to grant licenses to persons working telephones and also to

take over telephone systems already working. This is an ominous sentence to an industry which is already overburdened with taxation. I should therefore be grateful if, when a Select Committee is formed, I am given a chance to express my views.

The motion that the Bill be read was put to vote and carried.

The Secretary then raed the titel of the Bill "The Travancore Telephone Bill."

MR. PUTHUPALLI S. KRISHNA PILLAI : I beg to move that the Travancore Telephone Bill be referred to a Select Committee consisting of

Messrs: S. Krishna Aiyar,
Kottalil P. Abraham,
P. C. Adichan,
D. Francis,
N. John Joseph,
Dr. C. R. Harler,
K. P. Kochukora Thararkan,
P. Narayana Pillai,
K. G. Kunjukrishna Pillai,
Kotiveetil Ramankunju,
S. Chaitanatha Karayalar,
Joseph Vithayathil and
The Legal Remembrancer,

to report within therce months.

MR. M. P. JOSEPH : I second it.

The motion was put to vote and carried.

THE TRAVANCORE CREDIT BANK ACT AMENDMENT BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI : I beg to introduce the Travancore Credit Bank Act Amendment Bill.

I am sure honourable members will remember the various provisions contained in the Credit Bank Act which was passed by this Assembly not very long ago. Section 17 of that Act provides that the Credit Bank may enter into negotiations with Government and take over the business of the State Land Mortgage Bank. There is therefore statutory authorisation for the Credit Bank to carry on the work of the Land Mortgage Bank.

Section 23 of the Act provides that in respect of loans granted by the Credit Bank the summary process under the Revenue Recovery Act might be availed of.

Now, Sir, actually, when Section 17 was about to materialise, it was discovered that, under the provisions of the Credit Bank Act.

loans taken from the Land Mortgage Bank would not become, under Section 17, loans granted by the Credit Bank. And, except in the case of loans granted by the Credit Bank, Section 23 would not apply, and the summary processes under the Revenue Recovery Act would not be available. Government can only assign the securities in regard to loans granted by the State Land Mortgage Bank. They cannot assign their statutory right to avail themselves of the provisions of the Revenue Recovery Act. And, obviously, this House would not like the Government to be empowered to assign away such right of theirs to whomsoever they like.

In order to make the provision clear, in order to bring within the purview of Section 23 the loans granted by the Land Mortgage Bank also, this Bill has been brought in.

I move that the Bill be read in the Assembly.

MR. M. P. JOSEPH : I second it.

The motion was put to vote and carried.

The Secretary then read the title of the Bill.

"The Travancore Credit Bank Amendment Bill."

MR. PUTHUPALLY S. KRISHNA PILLAI : I request that the Standing Order may be suspended, and I may be permitted to move for the second reading of he Bill.

PRESIDENT : The Standing Order is suspended.

MR. PUTHUPALLY S. KRISHNA PILLAI : I request that the Bill be now considered.

MR. M. P. JOSEPH : I second it.

The motion was put to vote and carried.

Clauses 1 and 2.

The question that clauses 1 and 2 do form part of the Bill was put to vote and carried.

The clauses were added to the Bill.

Preamble and title.

The question that the preamble and title do form part of the Bill was put to vote and carried.

The preamble and title were added to the Bill.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that the figure '4' be inserted after the figures '111.' There is also a clerical mistake which may be corrected.

The amendment was put to vote and carried.

Figure '4' was inserted after the figures '111'.

PRESIDENT : Figure '8' has wrongly been put in there; apparently, it is a clerical mistake. It is rectified.

MR. PUTHUPALLY S. KRISHNA PILLAI : I beg to move that the Bill be passed.

MR. M. P. JOSEPH : I second it.

The motion was put to vote and carried.
The Bill was passed.

THE TRAVANCORE NEGOTIABLE INSTRUMENTS REGULATION AMENDMENT BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI : Sir, I beg to introduce the Travancore Negotiable Instruments Regulation Amendment Bill.

I have not much to add to what has already been stated in the Statement of Objects and Reasons attached to the Bill. I may however mention that, for some time this question of amending the Negotiable Instruments Regulation with a view to bring it on a par with the British Indian Act, has been engaging the attention of Government. Also, years ago, the Banking Enquiry Committee made a specific recommendation in this behalf; however, nothing could be done in that direction till now.

The question has been thoroughly gone into now, and all the necessary amendments have been made with a view to bring this measure into line with the British Indian Act. As my lawyer friends would be aware, it was a ruling of the Bombay High Court which drew pointed attention to the fact that the definition of the expression 'Negotiable Instrument' in the Act, was not in conformity with mercantile practice. That defect has now been rectified there, and the definition has been brought into conformity with the definition contained in the English Bills of Exchange Act. That definition has been adopted in this Bill also.

I may also say that the figure "24" has been changed into "48" with regard to the time fixed for the purpose of determining whether a person ought to accept an instrument when presented.

I would like to draw the pointed attention of the House to clause 8 of the Bill which provides that, notwithstanding any agreement to the contrary, if the instrument does not specifically provide the rate of interest, the rate of interest shall be presumed to be six per cent.

Clauses 9, 10 and 12 are intended for the protection of persons carrying on banking business. It is not desirable that the Travancore bankers alone are not given this protection while bankers in British India get it; hence the provision.

MR. M. P. JOSEPH : I second the motion.

The motion was put to vote and carried.
The Secretary then read the title of the Bill:—

"The Travancore Negotiable Instruments Regulation Amendment Bill."

MR. PUTHUPALLY S. KRISHNA PILLAI : I beg to move that the Bill be referred to a Select Committee consisting of—

Messrs. E. Subramania Aiyar,
K. C. Karunakaran,
Thariatu Kunjitommen,
T. C. Kesava Pillai,
Mathai Chemparathi,
S. Narayana Pillai,
Narayanan Nampothiripad,
N. Ramakrishna Pillai,
T. P. Velayudhan Pillai,
Srimati Devaki Antharjanam, and
The Legal Remembrancer,

to report within three months.

MR. M. P. JOSEPH : I second the motion.

The motion was put to vote and carried.

THE TRAVANCORE REVENUE SUMMONS REGULATION AMENDMENT BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI : I beg to present the report of the Select Committee which was appointed yesterday for the consideration of the Travancore Revenue Summons Regulation Amendment Bill. It is a unanimous report that the Bill might be adopted. I beg to move that the Bill be taken up for consideration.

MR. M. P. JOSEPH : I second it.

The motion was put to vote and carried.

Clauses 1 and 2.

The question that clauses 1 and 2 do form part of the Bill was put to vote and carried.

The clauses were added to the Bill.

Preamble and title.

The question that the preamble and title do form part of the Bill was put to vote and carried.

The preamble and title were added to the Bill.

MR. PUTHUPALLY S. KRISHNA PILLAI : I beg to move that the figure '4' be inserted after the figures '111'.

MR. M. P. JOSEPH : I second it.

The motion was carried,

The figure '4' was inserted after the figures '111'.

MR. PUTHUPALLY S. KRISHNA PILLAI : I beg to move that the Bill be now passed.

MR. M. P. JOSEPH : I second it.

The motion was put to vote and carried.

The Bill was passed.

THE TRAVANCORE CIVIL PROCEDURE CODE AMENDMENT BILL.

(contd.)

MR. PUTHUPALLY S. KRISHNA PILLAI : As honourable members might remember, it was out of deference to the wishes of some of them that the consideration of the Bill was postponed yesterday. Sir, this morning I discussed the provisions of the Bill with several honourable members, and I find that many of them have serious objections to the changes brought forward by this Bill. I admit that the present Bill seeks to make drastic changes in the existing law.

MR. T. P. VELAYUDHAN PILLAI : Has the Legal Remembrancer satisfied himself that the amendments he now seeks to introduce do not contradict each other?

MR. PUTHUPALLY S. KRISHNA PILLAI : I am coming to that.

I realise Sir, that the matter requires further study ; new points have been brought to my notice. I therefore suggest that the Bill may be taken up at a future date.

PRESIDENT : You move that it may be taken up at the next meeting of the Assembly?

MR. PUTHUPALLY S. KRISHNA PILLAI : Yes, Sir.

The motion that the Bill may be postponed to the next meeting of the Assembly was put to vote and carried.

PRESIDENT : Under Standing Order 15 (1) debate on adjournment motions shall ordinarily begin at 3-30 P. M. Official business of this meeting is all over. Is it the sense of the House that we meet at 2 and begin discussion of the adjournment motion?

I take it that the House agrees to meet again at 2 P. M. for the adjournment motion to be moved by Mr. Sivathanu Pillai.

As it is, non-official business comes up only on Monday. It is for the House to decide whether they would have it to-morrow itself.

MR. PUTHUPALLY S. KRISHNA PILLAI : There is another adjournment motion posted for to-morrow.

PRESIDENT : It is entirely left to the House to decide.

MR. S. KRISHNA AIYAR : I would suggest that the original programme be adhered to.

PRESIDENT : So, to-morrow we meet at 3-30 p. m.

MR. PUTHUPALLY S. KRISHNA PILLAI : Do we have questions and answers to-morrow, Sir ?

PRESIDENT : I think we had better meet at 2 P. M., to-morrow, have some questions and answers, and then proceed straightway with the adjournment motion.

The House adjourned for lunch at 1-5 P. M., and reassembled at 2 P. M., the President presiding.

MR. M. SIVATHANU PILLAI: Sir, I beg leave to move the following motion, namely that the business of the House be adjourned. This motion is intended to discuss a definite mat er of urgent public importance, namely, the following :

In Nanjinad during the last Kanni crop of 1114 there were thousands of acres lying fallow for which taxes for Kanni are being collected by coercive steps on the ground that fallow remissions are not contemplated; and lands are put up in auction.

This created great hardship and is causing great loss and suffering to the already suffering ryots of Nanjinad. Thus, the situation created deserves the serious notice of the House as also of the Government. In making this motion, Sir, I want the house to confine its attention particularly to Nanjinad for the reasons that I may refer to presently. This morning, Sir, there was notice of a motion regarding Puduval lands in Nanjinad, and the Chair ruled among other reasons that it was superfluous. I maintain, Sir, that my motion covers that aspect of the motion that was given notice of this morning. That may be found when we understand the reference in motion of the words "thousands of acres lying fallow in Nanjinad." Of course, in Nanjinad paddy lands go by different names, namely, the old ayacut lands, puduval conversions, rain-fed lands and garden lands. Of course, in this motion 'the paddy lands lying fallow in Nanjinad' covers all these four catgories. That is why I say I am one with the Chair in thinking.........

PRESIDENT:—Order, order. That remark is out of order.

MR. M. SIVATHANU PILLAI: What I mean to submit, Sir, is this, The motion covers all the different kinds of lands in Nanjinad, including Puduval conversions.

As I said at the very outset, there is a peculiarity about Nanjinad so as to justify the attention of the House being confined to Nanjinad at the present moment. I may say in justification of my position that Nanjinad is peculiarly treated in respect of the assessment on paddy lands and the tax thereon. However much it may be disputed by way of academic discussion, it has got to be borne in mind that it has been accepted more than once by the authorities concerned that Nanjinad is the most heavily taxed tract in the whole of Travancore. It is also borne out by record, namely the Kodayar Project Papers, that the average taxation per acre is Rs. 20-15 ch. whereas any land record concerning the neighbouring district of Tinnevelly will show that the average tax there is Bh. Rs. 10-1 a. It may in this connection be recalled by this honourable House that in the Madras Presidency in British India figures were taken for determining the district-war average taxation and it was found that the Tinnevelly district was the most heavily taxed of all districts in the Madras Presidency and in that district the average was found to be Rs. 10-1 a. But in Nanjinad it has been published for the information of the public in the Kodayar Project Papers that the average taxation is Rs. 20-15 ch. Thus, it will

be clear why I maintain that Nanjinad is peculiarly treated by Government, that it is heavily taxed and that the heavy taxation is allowed to continue, in spite of repeated representations.

Of course, the question has been agitated upon for the last forty years. It was presented and discussed both before the old Sri Mulam Popular Assembly and the old Legislative Council and the agitation is not wanting in this reformed legislature to rectify the error committed by the executive in the matter of commuting marakal into para measure for the purpose of assessing Nanjinad lands. Of course, it may be Greek to most of the honourable members here when I say that the executive committed a grievous blunder. Because most of the honourable members do not know it nor do they care to know it. But the executive in answer to agitation shirk the issue. The Nanjinad ryots are simply asked to wait till the next settlement. In other words, they impliedly accept the error committed by the executive in the matter of the commutation but they are not prepared to face the issue plainly. They shirk the issue by saying—You wait till the next settlement. Sir, this answer was challenged by me in the last session when I stated that by the time the settlement operations are begun the fate of the present Nanjinad ryots would be pre-settled. There is absolutely no exaggeration when I say this, for if they are to wait till the next settlement they will be nowhere, they will all be wiped out as ryots though they may be having their bodily existence in a half starved condition. I am glad to say, Sir, that the Government, particularly when it happened to be administered by no less a person than Sir C. P. Ramaswami Aiyar, understood the real position in respect of the taxation of Nanjinad. He was the first as the responsible head of the administration to declare openly and that too authoritatively that the question deserves looking into. It is with great pleasure that I say this. When this matter was represented by me before the previous heads of administration, one and all of them accepted in private discussion that the situation required looking into; but never admitted it in open pronouncements.

PRESIDENT: Order, order. Comparisons are invidious and may be avoided.

MR. M. SIVATHANU PILLAI: I am only tracing the history of the treatment meted out by the successive heads of the administration. It was clear to me that though what we contend in private conversation has been admitted to be a matter fit to be acted upon, the answer in public has invariably been that the question cannot be looked into unless the settlement operations are begun. So it was with very great pleasure that we received the authoritative pronouncement made in the year 1112 by Sir C. P. Ramaswami Aiyar, Dewan, that this question deserves looking into. In perfect consonance with that announcement, the Government was pleased to appoint recently a special officer to go into the question and report. I understand, Sir, that the special officer has already submitted his report to Government and from the answer

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given on the floor of the House yesterday by the Land Revenue Commissioner in reply to an interpellation I understand that that report is being considered by the Government. I do not know how long the Government will take to consider the report and pass orders on it. The ryots of Nanjinad are looking forward with very great expectation to the orders of Government on the report. It is with pleasure that they hear that the report has been very favourable. Let me satisfy myself by thinking about in this House that the report will be acted upon not by the very letter but in the very spirit with which the report has been called for, *i. e.* with a liberality characteristic of the Dewan. Sir, it is no wonder why the ryots are looking forward eagerly to the decision on the report, because it will give great relief to the extent of at least 20 per cent. remission permanently.

PRESIDENT: The honourable member seems to know a great deal about the report.

MR. M. SIVATHANU PILLAI: Yes, Sir, by intuition. After all, we are all very anxious to know about the report. We can understand that it is a very favourable report. For, is it not also true that at least when a man is about to retire he will desire that he should be remembered with kindness and good will by the people. That is the psychology of the human mind. I do not think Mr. George, the author of this report, will prove an exception to this. So Dame Rumour plus a correct study of the human psychology made me believe that the report is favourable. Perhaps I may even anticipate the kindness of Government that favourable orders will be passed upon the report. I am always very optimistic. I have always got a very robust optimism. Even if the report be not in perfect unison with our great expectations, it may be with us likely in certain very important aspects; but all the same I always wish and believe it to be for us; because I have great faith in the sense of justice of our cause and in the goodness of the author of the report. That is why I take it that the report is favourable and I hope and wish that the report will be acted upon with utmost favour by Government and the decision on the report will be announced in this Assembly before this session closes.

The third reason why Nanjinad should be treated with particular favour is that practically there is no other occupation for the ryots of Nanjinad. They have no other income than from paddy lands. I was rather surprised to hear the Land Revenue Commissioner say yesterday on the floor of the House in reply to an interpellation of mine as to how he justified the action of his department in collecting taxes on lands which were lying fallow, "Let them pay from the previous year's income." Of course, it was very easily said with a certain amount of refreshing candour. I ask him "Will he be satisfied in these days of economic depression if his pay for the next month is cut off and he is

asked to go on with his pay for the current month?" (*A member*: "*Hear, Hear.*") I may say, Sir, that we, particularly the Nanjinad people, are prepared always to contribute the legitimate dues to the Government, but at the same time we have a right to ask Government to do the right thing by us. We are always keenly aware of our duty to the Government. We recognise our duty first and then our claim for rights. Even as the Land Revenue Commissioner said, we are prepared to pay from the previous year's income if there is that income and unfortunately the Revenue Commissioner has not got the heart to feel for the poor suffering ryot. It has been said that the present Revenue Commissioner is over-kind to the ryots of Nanjinad, but as a matter of fact, yesterday's answer will give the index of his own mind. I ask the Land Revenue Commissioner this simple question, whether he is really justified by facts to imagine that there is income for the Nanjinad ryots. I can refer him very safely to the action taken by Government in the matter of reduction of tax in the years 1108, 1110 1111, 1112, and 1113. This year the Government have been repeatedly shown that the ryots are really suffering. Even a reference to the table of the Kodayar Reservoir readings for the last few years will make it quite plain whether there is plenty of water or not. In normal times too, of course, figures are not wanting to prove that there is not enough water to supply. Such being the case, I do not understand how the Land Revenue Commissioner was justified in giving the answer that the Nanjinad ryots may be asked to pay the tax on lands lying fallow from the income of the previous season, when seasons are admitted to be failing successively.

My fourth reason is this. When I was going over here to attend the present session, on the way I was looking at the board in front of the office of the Division Officer, Nagercoil, and the reading was only 3·25 in Pachi Para Dam while normally at this time of the year the reading should be between 20 and 25. If that be the reading, I ask you, Sir, to project your mind a little bit behind and see what would have been the reading during the Kanni cultivation as referred to in this motion. Soon after the month of Thulam is over, the fields in Nanjinad require a good deal of water for flushing for wet cultivation as opposed to the Kanni cultivation, the dry cultivation. During the last Kanni thousands of acres had to lie fallow because there was no rain and there was no possibility of getting water to irrigate such lands. The difficulty arises in this way. Sir, as I said before, in Nanjinad there are different classifications of lands. It was once thought that the Kodayar Project soon after it was finished will be a Kamadhenu. That is why it was always thought that all ayacut lands will never fail for want of water and that is why there was no thought of paddy lands coming under ayacut lands lying fallow at all. That is why the rules did not provide for fallow remissions in regard to ayacut lands or even for lands under the commanded area. So, when thousands of acres of land had to be left uncultivated for want of water there were as usual applications made before the Taluk Cutcherry and the Pakuthy Cutcherries asking the authorities concerned to come and inspect the lands lying fallow and make their report saying that the lands were

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lying fallow. But they said that the rules did not provide for the inspection of lands lying fallow especially in the commanded area and so the proverthicar or the accountant or other officer empowered to make the inspection and submit a report was helpless in the matter. There were numerous applications from the ryots to the taluk and pakuthy cutcherries to say that there were lands in the commanded area of the Kodayar Project lying fallow. But the taluk as well as the pakuthy authorities kept quiet because they said that there was no enabling provision in the remission rules for Tharisu *i. e.* fallow lands. That was a terrible handicap, so much so that in the two taluks of Tovala and Agastiswaram you will find numerous applications for fallow remissions, which have not been even looked into. Now, Sir, I realise the difficulty at this time of the year to find out whether the lands as reported by the ryots were really lying fallow at the time of the Kanni crop. At least there are applications still in the pakuthy and taluk cutcherries and they have got to be relied upon without making any enquiry because the Kumbhom crop has already been raised and harvested. But I want to know the justification for saying that because there is no provision in the rules the ryots should pay for lands which had to be left fallow for want of water. The rules are intended to cover certain situations. In those days, it was never contemplated that the supply of water from the Kodayar Project would fail and that the lands commanded by the Project would have to be left fallow. But those days have changed. There has been repeated failure of rain in and around the hills surrounding the Pechipara Reservoir and the lands were actually lying fallow. When that is the case, why should we not now change the rule? Why should not the Government act if they find that these lands are lying fallow? Why should not Government allow remission if they find a particular land lying fallow? In 1111 nearly 24 to 25 thousand acres of land were lying fallow. Of course that was represented to the Government and the authorities also were informed by means of petitions by the ryots that their lands had been lying fallow for so many months for want of water. Not only that; the irrigation authorities notified their intention to the Government to cut off irrigating 25,000 acres because there was not sufficient water for irrigating those lands. Naturally the ryots being apprised of the condition of the reservoir could not and did not cultivate. But towards the close of the year, the legal operations to realise tax from even those lands which were notified to have been cut off from the supply of water from the Kodayar Project, went on merrily. When representation was made to Government, what was the answer given by Government? I do not know what argues from that answer, *viz.*, "Look here, we gave you the advice not to cultivate the land. The result is that you do not even stand to lose as otherwise you would have lost in case you had cultivated the land. At least for the advice that we gave, we are entitled to realise the tax from the lands lying fallow. In other words, this is remuneration for giving you advice." That was actually the answer given on the floor of the House. Accordingly they collected the entire

tax from lands that lay fallow for that season. We repeatedly represented this matter to Government and His Gracious Highness went over to South Travancore and as goodness would have it and as our good fortune would have it too there was a good shower continuously for ten days when His Highness was staying at the Cape. Then in all his solicitude as is proverbial always with His Highness he gave us by way of gift Rs. 24,000. That is the justification I say for this motion. Lands have been lying fallow but kist collection is going on merrily from those lands. Lands are being put to auction. Where am I to go and find out the money for paying the kist? That is the justification for this motion of mine. So, I would say, let not the rules stand in the way of the Government looking into the matter and giving redress to the ryots whenever there is justification. It is accepted by the Department that lands to the extent of 3 to 4 thousand acres were lying fallow in Nanjinad during the last Kanni crop. Whatever be the exact extent of land lying fallow, the fact is there that not only converted lands, not only rainfed lands but also lands under the commanded area and ayacut lands were lying fallow for want of irrigation water. The question then is how to find out the acreage. At this late hour certainly it is not possible to find the truth of the statement that so many thousands of acres were lying fallow. But there are applications made before the local authorities to say that particular lands with particular survey numbers were lying fallow during the last Kanni crop and a reference to the irrigation authorities will show that particular areas were not cultivated. These two things put together will convince any man as to the extent of land lying fallow. Perhaps it may not convince the Land Revenue Commissioner. Sir, in order to avoid repeated representations of this nature from the people with regard to granting of full remission for lands lying fallow not only of water tax but also of land tax, I say that the remission rules should be revised to include Tharisu remissions—fallow remissions. How do Government justify their action in demanding water cess in Agastiswaram Taluk? Even in normal times the water there may not be sufficient. But by some means or other the ryots were able to raise cultivation. Even in that case I can understand the demand for water cess. But they do not supply water. Let alone the tail-end lands. When there is no possibility of supplying water what is the justification for Government to ask water cess? Sir, the only course is for the Government to modify the remission rules which should cover tarisu as well as karivu. Of course in 1112 there was an attempt to modify the rules; but I must say, Sir, with deep regret that what was given to us by the right hand when lands became dry (karivu) was sought to be taken away by the left hand when tarisu was also included. Government said that under rule 7 under the modified rules this remission cannot be claimed as a matter of right while in respect of karivu it was so before. That is only a matter of discretion on the part of Government and it does not give any right to the ryot to demand *ipso facto* when the lands become dry or fallow, any remission. So, what I would submit for the consi deration of the House is that the rules have got to be modified to cove

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not only karivu and tarisu but also in such cases the ryots should be given the right to demand of the Government full remission when the lands lie fallow or when the crops wither away. That rule has to be modified effectively and placed before a committee of the representatives of the Taluk concerned and the authorities of the Department concerned before final orders are passed.

PRESIDENT: Order, order. The honourable member may bring his remarks to a close.

MR. M. SIVATHANU PILLAI: In winding up my remarks in respect of this motion, I would submit that there are records before the Taluk authorities. The Land Revenue Commissioner can call for those records to see which of the lands were lying fallow during the last Kanni crop and the Government have got full power to remit the tax if they are satisfied that the lands have really been lying fallow. Government have not got the least justification to command in such cases the payment of water cess and land tax by the ryots. With these words I commend the motion for the acceptance of the House.

MR. K. NARAYANAPERUMAL NADAR: Sir, although my adjournment motion was identical with this motion, it was disallowed. It differed slightly only in some respects. A careful reading of my motion will show that I did not ask anything different from the present motion. My motion was "The situation created among the puduval cultivators of the area commanded by the Kodayar Project, owing to the coercive process.........

PRESIDENT: That motion has been ruled out of order. The member is not justified in dealing with it.

MR. K. NARAYANAPERUMAL NADAR: Am I asked to support it?

PRESIDENT: You cannot canvass the ruling of the Chair. You can read through your motion, re-read it and may comment upon it.

MR. K. NARAYANAPERUMAL NADAR: "The situation created among the Puduval Cultivators of the area, commanded by the Kodayar Project, owing to the coercive process recently adopted for realising water tax for 1113, though a large portion of the said area remained fallow, (tharisu)." Sir, it is a fact known to the public and to the Government that in 1113 more than 80 per cent of the puduval lands had been made to lie fallow because of the scarcity of water. If I can convince this House that the supply of water in the dam was restricted by the P. W. D., I think my point is gained. I am sure I can convince this House and say that the supply of water was restricted by the P. W. D. Interpellation No. 186 regarding the opening and closing of the L.B.C. was answered by the Chief Engineer on the 15th Karkadagam 1113 as follows:—

"In view of the very serious condition at present, on account of the want of rain and also in view of the present low reading of 3 80 inches in the Kodyar Reservoir, this evening, which by itself is sufficient to irrigate up to fall field, only about 1500 acres of the

Ayacut this Conference (on 6th 1938) resolves that the first supply of water may be given to the maximum of about 18000 acres in the upper reaches of the channels, as it is not possible to bring the same to the tail end lands".

Now, Sir, the puduval cultivators prayed for tharisu remission. The Land Revenue Commissioner says "you cannot claim tharisu remission as a right." That was what he said during his recent visit to South Travancore. He visited pakuthi cutcherries and met the cultivators in those pakuthies that approached him. He gave lectures to those people and answered some of their questions. Only some questions were satisfactorily answered. In this respect he set a happy precedent to his successors. He said you cannot blame me. There is no rule to allow fallow remission for puduval lands. But there is no justification for that rule. Some 20 or 25 years ago the Kodayar Dam was sufficient to irrigate all the lands that were earmarked by the Kodayar Project. But for the last 10 or 15 years it is uniformly observed that water is not sufficient to irrigate even the ayacut lands. When the Government thought that water will be sufficient to irrigate all the lands, they are in a way justified in having framed such a rule. If there was not such a rule many people would have allowed their lands to remain fallow. So a tax should be realised from those lands. It is now found that water will not be sufficient. Therefore it is high time for the Government to modify the rules. There is still such a rule. It is not my fault. It is not the fault of the Government. It is the fault of those who preceded me. That was what he said. Then I had to explain the whole matter to him I said that the existence of the rule is not the fault of the people. Even as a matter of concession I claimed full remission for the puduval lands for 1113. Then he said that he had no power to give remission and that he would recommend to Government for granting full remission. I do not know what he is going to say now. Perhaps, it may be argued that the full remission may be put off till the financial situation of the country improves. I do not ask remission for the whole State. I do not ask full remission for even one-third of the lands in Travancore. I want remission only for puduval lands commanded by the Kodayar Project. I do not want remission for all the puduval lands. I want remission only for such of those lands as have not been cultivated for want of water. In these days of hard depression it is the duty of the Government to help the peasants or it will be like killing the goose that lays the golden egg. The lot of the peasants can be described in the words of a great poet, I think it is Thomas Gray, as follows :—

"But knowledge to their eyes her ample page
Rich with the spoils of time did never unroll
Chill penury repressed their noble rage
And froze the genial current of the Soul".

With these words, I support the motion.

MR. C. JEBAMONY NADAR : I support the motion and wish to say a few words as the mover has confined the motion to Nanjinad alone. As the area commanded by the Kodayar Project extends to the three taluks of Thovala, Agastiswaram and Kalkulam what is applicable to

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one is equally applicable to the other. If any area in Nanjinad was not supplied with water it was so with reference to Agastiswaram and Kalkulam as well. It is a fact that certain branch channels in Kalkulam, namely, Colachel, Cheramangalam Major and Minor and Muttam channels, were not supplied with water for the Kanni crop of 1114. Though the honourable member Mr. Sivathanu Pillai complains of high taxation in Nanjinad it is no better in Kalkulam and Agastiswaram, because this House is aware that there is a large area of converted lands in these two taluks which before conversion were subject to tree tax as well as land tax. The trees had to be cut down long ago when the lands were converted. Yet we have to pay tax for these trees which have ceased to exist and therefore ceased to yield any produce. Similarly, since conversion, we cannot raise any dry cultivation but land tax also is being realised. Over and above these, water cess has been imposed at the rate of Rs. 7 per acre. Thus it is really a case of treble taxation. The rainfall in the locality is usually low for the last four years. It is considerably below the normal. The difficulty experienced by the ryots of the locality would be made clear by a reference to the answer to one of my questions to-day. Colachel block area 438 acres; tanks 3; distance from Pachipara reservoir-37 miles; Cheramangalam major: area-259 acres; tanks-nil; distance from reservoir: 37½ miles. Cheramangalam minor area 229 acres; tanks nil; distance from reservoir 37½ miles. Just imagine a tank in Trivandrum and a paddy field in Quilon to be fed by that tank. Is it easy? This is one of our various difficulties.

In spite of all these difficulties the Remission Rules do not provide for tharisu remission to Kalkulam and Agastiswaram but only to certain pakuthies of Thovala. Why there should be this differential treatment to different portions of the same commanded area is not clear. Probably the officers who were responsible for the framing of the rules were not aware of the local conditions and very likely they did not take into consideration the change brought about by the Project within its area. During the last budget session I tabled a token cut on this matter. But it did not come up for discussion. I have also sent an interpellation to invite the attention of the Government to this aspect.

For the Kanni crop of 1114 we were subjected to a further loss by way of application fees required for remission petitions. But all the applications were summarily rejected saying that they were not permitted by the rules. There is no provision for refund of this fees. It is therefore nothing but reasonable that the rules should be amended. Recently, resolutions to this effect were passed at a meeting held in Colachel. I believe that they would have, by this time, reached the Government.

In the matter of revising the rules they should be so amended as to be applicable to the whole State, both to the North and to the South. If lands lie fallow in the South for want of water, the same thing might happen in the North owing to excess of water. It would be only fair that the same rule applies to the whole State.

It has been said that tharisu remissions are only a matter of grace and not of right. I hope and believe that the rules would be amended at an early date so that fallow remission may be granted as a matter of right. Until that is done, relief for the Kanni crop of 1114 cannot be delayed. A friend of mine told me that it took nearly one hour for a certain Deputy Tahsildar to sign the demand notices issued on a day. That indicates the number of them issued. I appeal to the Government to suspend the issue of demand notices and the coercive steps taken under them until they finally dispose of the question. Immediate orders are called for because people in that part of the country are really starving not to speak of the appalling economic depression and all the consequences due to the failure of seasonal rains for the last four years. In supporting the motion I must also include the lands outside the commanded area in the four southern taluks. I understand that the localities unsupplied with water within the commanded area could be ascertained from the records maintained by the Engineering Department. For those outside if the Tahsildars are so minded they could readily supply the information. I earnestly press for full remission of tax and water cess for the Kanni crop of 1114 for all the four taluks of Tovala, Agastiswaram, Kalkulam and Vilavankod.

If the remission rules are to be applied they must be applied to all parts of Travancore. Somehow or other they are confined to certain taluks like Tovala and Agasteeswaram. It may be due to the operation of the Kodayar Project. Probably it was not known to the authorities then that times may come when it would be impossible for other taluks also to raise crops for want of water. I moved a token cut in the last Budget Session of the Assembly but unfortunately it was not carried. As matters stand at present, as has been expressed by some members of this House it is more or less a matter of grace on the part of the Government and not a matter of right to grant remissions. So, I hope and believe that the benefit of the remission rules will be given not only to South Travancore but also to those taluks of North Travancore where the need is great. In South Travancore there is want of water and in North Travancore there is excess of water which stand against raising of crops.

In the case of South Travancore want of water is very keenly felt at present. People are not able to raise crops and thereby they cannot pay tax to Government. One responsible officer told me that it took him nearly an hour to sign demand notices to the defaulting ryots. This shows the extent of poverty in South Travancore which is mainly due to the fact that cultivators were not able to raise crops. With these words I support the motion.

MR. T. C. KESAVA PILLAI: Sir, in the first place I beg of you to permit me to speak in English.

PRESIDENT: Permission is given.

MR. T. C. KESAVA PILLAI: Sir, I have to place a few suggestions in addition to what my predecessors have already submitted before this Assembly. For the last three years repeated petitions and memorials have been submitted to Government on this matter from outside this House as well as inside. Again in almost all the sessions this cry for remission was made in this House.

MR. K. NARAYANAPERUMAL NADAR: Sir, on a point of order. The member was speaking in Malayalam hitherto in the House. There is a standing order to the effect that when a member has chosen a particular language, English, Tamil, Malayalam or Telugu he must stick to it in future.

PRESIDENT: Will the honourable member refer me to the rules?

MR. K. NARAYANAPERUMAL NADAR: There is such a rule, I am sure, Sir.

PRESIDENT: This is the Rule: "The business of the Legislature shall be transacted in English provided that the President may permit any member to address the Chamber in Malayalam or Tamil." Therefore, in speaking in English he is following the rule. When I permit him to speak in Malayalam I am giving him special permission.

MR. T. C. KESAVA PILLAI; Sir, it is 200 years since the different parts of our State came under one sovereign. Then there was no uniformity so far as taxation was concerned. Now as regards remissions, there were repeated requests to Government that the remission rules should be amended and the following items inserted. That is, fallow remissions, Kariva remissions, and Azhikichetham remissions should be given. This will be applicable to the whole State.

Famine is a constant trouble to the agriculturists. What is the cause for this constant trouble? That is due to the scarcity of water. If our present Chief Engineer would like to peruse the important Kodayar Papers he would very well see therein very many valuable suggestions for the supply of irrigation water.

I think, Sir, there is a proposal now to build a dam at Perumcherri. The catchment area of the reservoir is 60 square miles and there is 90" of rain there. So, the learned Chief Engineer would certainly depute one of his best Engineers to execute the work.

Now good drinking water and water for agricultural purposes can be obtained by diverting the course of the Thambravarni River at Thriparapu. The water at present is wasted into the sea. One particular Engineer whose name can be written in golden letters is Mr. Horsly who had drawn up a scheme for this purpose.

Our President, when he visited South Travancore, gave us hope by saying that the tanks will be connected by suitable channels to take water to all the parts. The existing tanks in most of the taluks are in a very bad condition. In the southern taluks people have given up the cultivation of paddy and instead they cultivate tapioca in the fields.

In the whole state there are thousands of irrigation tanks. If Rs. 500 were to be spent for each tank it will go a great way in solving the problem of water scarcity.

As I have tabled another adjournment motion regarding the scarcity of water in my constituency I do not propose to say much of those two taluks. But I say all the benefit that is to be conferred on Nanjinad should also be given to Kalkulam as it is a part of Nanjinad. To supply water to the whole of Nanjinad area it is imperative to increase the storage capacity of the reservoir. In former days the water in the reservoir was sufficient for the ryots. But now the cultivable lands have increased in area and so the water is insufficient along with the drought.

Then there is another method by which water can be supplied to the ryots. This is by means of tube wells. I had personal experience of tube wells being run to 50 ft. But I saw water at the 35th ft. and at the 40th ft. At the 40th ft. there was an overflow of good spring water. If the Chief Engineer would try these tube wells on the Kodayar hills he would find that there are ever so many underground springs there. I have myself seen that if a pipe is bored down 200 ft. we get water at the 40th ft. to overflow. Boomadevi is always ready to give good water to the needy if they are prepared to take it. With these words I support the motion.

But before closing I would also request the Government that fallow remissions should be given to the ryots of Kalkulam and Vilavankod. I am in the belief that a responsible officer in the State will not tell a lie. But the learned Land Revenue Commissioner told the House that he did not receive any representation from the ryots in regard to the remission of tax. But it was I who presided over an Association which sent resolutions to Government to this effect. I had myself sent petitions to him which he had not the mentality to accept. There is no rule for remission of fallow lands. So I would strongly and emphatically pray to Government and move this Assembly that in future Government officers should be made to respond to the representations of the people. I hope that everything substantial will be done to alleviate the distress of the ryots of South Travancore whose welfare is always in the mind of His Gracious Highness the Maharaja and of his trusted minister Sachivottama Sir C. P. Ramaswami Aiyar.

MR. S CHATTANATHA KARAYALAR : Sir, I desire to make a few observations in support of the motion before this House. I am in perfect sympathy with the object of the motion. The honourable mover and the members who spoke in support of the motion have emphasised three points in respect of the difficulties of the ryots of Nanjinad. They emphasised that the general level of taxation was very high. They also said that large tracts of cultivable lands were lying waste for want of an adequate supply of water. They also brought to the notice of this House that water cess was being collected from areas which were supplied with water. They also brought to the notice

Mr. S. Chattanatha Karayalar.]

of the Government that their difficulties were further enhanced by reason of the error that crept in the matter of conversion of *marakkal* into *para* for assessment. I can appreciate the difficulties confronting the taluks which are thus affected and I particularly appreciate them, because conditions in my own taluk of Shencottah are more or less similar to those that obtain in Nanjinad. All these difficulties are prevalent in my taluk. That is the special reason why the motion appeals to me. I have got to bring to the notice of the Government that vast areas of cultivable ayacut land in Shencotta Taluk are lying fallow year after year and, I believe, that the ryots of the taluk have year after year brought the same to the notice of the Government and I am very glad to note that Government have been granting remissions year after year. I refer particularly to the vast areas lying fallow in Samburvadagarai and Aykudi pakuthies.

I am mentioning this fact because, if these areas are frequently subject to these difficulties, if they are allowed to lie fallow year after year, Government will be confronted with the question of remission every now and then. I therefore ask Government whether it will not be in the best interests of the ryots to amend the tharisu remission rules, so that lands which in fact have been lying fallow for several years may be brought within the scope of the rules relating to tharisu remission. I may suggest that, even without serious amendments being made to the rules, the schedule attached to the tharisu remission rules may be suitably amended to cover areas which have been in experience found to be suffering from these difficulties. That is the fact which I want to bring to the attention of this House and the Government. I also draw the pointed attention of the Land Revenue Commissioner to this aspect of the matter.

Another point which I wish to emphasise is the difficulty that was experienced by the Nanjinad ryots in respect of the water cess collection. Water cess is a levy made for a specific purpose or for certain service rendered. If that service is not available, the levy ought to be cancelled. That is a point which the Government should very seriously consider and rectify. With these observations and with the additional suggestion that, if and when the question of remission of the tharisu lands comes up the case of Shencottah taluk should receive adequate consideration at the hands of the Government I support the motion.

MR. D. FRANCIS (*Kalkulam cum Vilavancode*): ஸர், ஆணையில் மெம்பர் மிஸ்டர், சிவதாணுபிள்ளை கொண்டுவந்த பிரமேயத்தை நான் அனுகூலிக்கிறேன். தரிசு நிலங்களுக்குக் கரம் வசூல் செய்யக் கூடாது என்கிற தர்க்கம் கடந்த 5 வருஷங்களாக சட்ட சபைகளிலும் அர்ஜிகள் மூகாந்திரமும் நடந்துகொண்டேயிருக்கிறது. ஆனால் இது வரையிலும் ஒரு நிவர்த்தியும் உண்டாகவில்லை. தென்திருவிதாங்கூரில், தோவாளை, அகஸ்தீஸ்வரம், கல்குளம், விளவங்கோடு என்னும் நான்கு தாலூகாக்களிலும்....

MR. M. SIVATHANU PILLAI: May I know whether any official reporter is taking down the Tamil speech.

PRESIDENT: Yes.

MR. M. SIVATHANU PILLAI: But I see none of the reporters writing.

PRESIDENT: The reporter behind the member is taking down his speech.

MR. D. FRANCIS: மழையில்லாததினாலும் பேச்சிப்பாறை அணையில் ஜலம் இல்லாததினாலும், அநேக ஆயிரக்கணக்கான ஏக்கர் நிலங்கள் கிருஷி செய்யாமலே, 4, 5 வருஷங்களாக தரிசாகக்கிடக்கின்றன. ஆனால் தரிசு நிலங்களுக்கு கரம் கொடுத்துத்தீரவேண்டுமென்கிற சட்டமிருப்பதால் வருஷாவருஷம் கிருஷிகார்களிடமிருந்து கரம்வசூல் பண்ணப்படுகிறது. சட்டம் இப்படி விரோதமாயிருந்தபோதிலும் தரிசுநிலங்களுக்கு கரம் வசூல் பண்ணுதல் மனசாட்சிக்கு விரோதமாயிருக்கிறது. மழை பெய்யவில்லை. பேச்சிப்பாறை அணையை பெருக்கவில்லை. கால்களில் ஜலம் விட்டுக் கொடுக்கவில்லை. அதனால் கிருஷி செய்யவுமில்லை. இப்படியிருக்க எந்த நியாயத்தைக் கொண்டு கரம் வாங்கலாம்? மழைஜலம் கொண்டு கிருஷி செய்யப்படுகிற விளவங்கோடு தாலூகாவிலும் தரிசு நிலங்களுக்கு கரம் வசூல்பண்ணப்படுகிறது எவ்வளவு கஷ்டம். கிருஷிக்காரனுக்கு நிலத்தில் கிடைக்கிற வரும்படியில் ஒரு சிறு பாகம் சர்க்காருக்கு கிஸ்தியாக கொடுக்கவேண்டியது. கிருஷி செய்யாத நிலத்துக்கு அவன் எங்கிருந்து கரம் தரவேண்டும்? தண்ணீர்கொடுக்கிறதற்கு கரம், தரைக்கு கரம், நிலம் திருத்தும்போது வெட்டி முறித்த தெங்கு, புளி, மாவு பனை, முதலிய மரங்களுக்குள்ள கரம், பயிர் செய்யாமல் தரிசாய் கிடக்கிற நிலங்களுக்கும் கரம் வசூல் பண்ணப்படுகிறது. இந்த ஆண்டு கன்னிப்பூவுக்கும் தரிசு நிலங்களுக்குக் கரம் கொடுக்காததினால் நிலங்களை லேலத்தில் விற்கும்படியாக உள்ள நடபடிகள் நடத்தப்படுகின்றன, அதனால் ராஜ்ஜியத்தில் ஒரு அவசியமான சட்டம் இல்லாதிருக்குமானால் இதைத்தடுக்க ஒரு சட்டம் உடனடி பாஸாக்கி நிலங்களை விற்காமல் வேண்டிய ஏற்பாடுகளை செய்யவேண்டும் என்று பிரஸ்தாபித்துக் கொண்டு இந்தப் பிரமேயத்தை பலமாய் அனுகூலிக்கிறேன்.

MR. P. NARAYANA KURUP: Sir, on the principle of no yield and no tax I also support this motion. I have a very great complaint against my learned friends who have been supporting this motion, as they have been very partial towards northern Travancore. I would have been very glad if they were agreeable to have the operation of the principle of this adjournment motion extended to northern Travancore as well. Taxation is generally based on the yield of the land. If therefore, the land is fallow, and there is no yield for the year, there is no justification in realising tax for the year from that land. This principle should be applied to all parts of Travancore.

MR. M. RAMACHANDRA RAO (*Land Revenue and Income Tax Commissioner*): Sir, the resolution before this House when analysed consists of two parts; one is about the remissions to be granted as a special case and second the revision of the remission rules. I shall deal with these two subjects. The resolution refers to Nanjinad. As long as the price of paddy was high, and there were seasonal rains, and the Kodayar channel supplied water, the Nanjinad ryots were safe and had not complained. But during the past seven years, Kodayar channel and seasonal rains disappointed the cultivators in those areas; the price of paddy also went down so much so that the Nanjinad ryot is hit both ways. Therefore, there have been complaints. A perusal of the proceedings of the Legislative Assembly shows that the average Nanjinad tenant had not complained in this manner some eight years ago. But during the last seven or eight years complaints have been raised. I may bring to the notice of the House that from the year 1110, apart from the special remission which the Government had given to the whole State, seasonal remissions had been given to the Nanjinad ryots. The Nanjinad ryots have had more concessions than those sanctioned for those in the other parts of the State. So it is clear that Government have been alive to the fact that not only Nanjinad ryots but the ryots of the whole State who have been hit by the general depression needed remission. In the year 1112 when the Dewan toured to Cape Comorin a deputation waited on him and pointed out the difficulties which the ryots experienced. The first was the high tax prevailing in the area. The conversion of the *marakal* into *para* was another difficulty. Then again there was the water problem. The Dewan replied to the deputation that the matter would be favourably considered in the next resettlement. Subsequently, it was decided that the resettlement may be postponed. The Government however thought that the problems confronting the ryots of Nanjinad required urgent attention as the existing high tax could not be reduced till a resettlement. A percentage reduction is alone possible till the next resettlement. The question of the *marakal* and *para* was also taken up and the Land Revenue Commissioner had been deputed to study it and make a report. I may say that the Land Revenue Commissioner has submitted the report and it is now under consideration by the Government. I expect Government will be able to pass final orders on that report before the end of this month and I hope the decision will be favourable to the Nanjinad ryots. The concessions which will result from this report plus the special concession which the Government have been allowing every year to the whole State will certainly give immense relief to the ryots of Nanjinad.

There are two other difficulties referred to viz., the remission on tharisu lands and the remission of water cess on lands which could not be cultivated for want of water. The existing remission rules provide for tharisu remission only in some pakuthies of the Tovala and Agastiswaram taluks and that too in certain specified survey numbers of some specified pakuthies therein. The Government have been granting tharisu remission for other areas in Nanjinad as a special case for the past two or three years and I have called for a statement of lands left

as tharisu in 1114. As soon as the statement is received, I shall do what I can in the matter. I can assure the House that the Government will act sympathetically as they have always done. Regarding water cess on lands not supplied with water, I am studying the question and I shall take it up with Government shortly.

Coming to the question of revision of remission rules, as regards all tharisu lands it is a very difficult question; while lands in South Travancore are left fallow for want of water, some lands in North Travancore suffer from too much water. The question has to be tackled very carefully and I shall study it to take it up with Government as soon as possible.

Before the month is out, you can expect favourable orders from Government regarding the *marakaal-para* report; and I hope that will satisfy the average Nanjinad ryot.

MR. M. SIVATHANU PILLAI: Is it not a fact that orders on that matter will be passed even before the end of the month?

MR. M. RAMACHANDRA RAO: I do not think it will be possible, because I got the report only the day before yesterday.

In regard to the second point, so far as the ryots of Nanjinad and Shencotta are concerned—I cannot forget Mr. Karayalar—now that resettlement has been postponed, the average ryot has to rest content with special remissions granted year after year.

MR. M. SIVATHANU PILLAI: In regard to the *marakal-para* question, may I ask whether it is a concession granted to the ryots or only rectification of a mistake on the part of the Government?

MR. M. RAMACHANDRA RAO: I take it that it is a concession.

Mr. Kurup was arguing the principle of "no yield, no tax". Sir, that is not the correct principle in taxation. The yield during the course of several years is calculated and the average is taken: it is such average that forms the basis of assessment. We take into account the lean year as well as the fat year.

MR. P. NARAYANA KURUP: Is not the tax a proportion of the yield?

MR. M. RAMACHANDRA RAO: Only of the average yield.

MR. KOTTALIL P. ABRAHAM: Actual yield, or prospective yield?

MR. M. RAMACHANDRA RAO: Average actual yield.

MR. T. C. KESAVA PILLAI: May I know from the Land Revenue Commissioner whether he would recommend remission for the Kumbhom crop of 1113 so far as the tharisu lands of the Vilavankod and Kalkulam taluks are concerned?

MR M. RAMACHANDRA RAO: I am coming to the question of tharisu lands.

MR. C. JEBAMONY NADAR: According to the Land Revenue Commissioner, is it the principle that even when there is no yield tax should be paid?

MR. M. RAMACHANDRA RAO: If there is no yield for many consecutive years, the position would be different.

[Mr. M. Ramachandra Rao.]

So far as tharisu lands are concerned, the remission rules extend only to a few pakuthies of the Tovala and Agastisvaram taluks. Now the question is raised whether the rules should be extended to all lands which have been declared as tharisu. From 1110 onwards, Government have been granting special remissions in respect of all lands.

MR. K. NARAYANAPERUMAL NADAR: Has the Land Revenue Commissioner recommended to Government that the remission rules should be modified?

MR. M. RAMACHANDRA RAO: No, Sir. In regard to the tharisu lands also, for the present, the ryots should be satisfied with the special concession granted by the Government as and when found necessary.

In regard to water cess, the question has been raised whether it can be realised from lands which have not been watered. The question will be considered. That is all I am able to say at present.

MR. M. SIVATHANU PILLAI: With regard to the lands which lay fallow during the last Kanni crop, may I know what the Government propose to do?

MR. M. RAMACHANDRA RAO: The matter will be brought to the notice of the Government who will grant special concession if considered necessary.

MR. M. SIVATHANU PILLAI: Has the matter been reported to Government?

MR. M. RAMACAHANDRA RAO: Not yet Sir.

I hope the House will realise that the Government have been very sympathetic towards the landholders. It is not fair to the Government to say that they have been taking the blood out of the ryot.

Sir, in regard to the remission rules, I submit it is a very important question. The rules have to cover the whole State. As the House is aware, if in one part of the State the crop fails for want of water, in another part it fails due to excess of water. The rules have therefore to be framed very carefully. I may inform the House that so far, I have been able to tour only six taluks; within the next two months I hope to travel through some more. Then, I shall be in a position to arrive at some conclusion as to the revision of the remission rules, and to make suitable recommendations on the matter.

MR. M. SIVATHANU PILLAI: Will the Land Revenue Commissioner give us an idea of the number of cases, reported to Government, of lands which were lying fallow during the last Kanni crop?

MR. M. RAMACHANDRA RAO: The reports have been called for from the Peishkars.

PRESIDENT: Before the mover begins his reply, I might mention that Government have before them the report of Mr. George; and, without any loss of time, orders will be passed on that report. The exact scope of the orders, it is impossible to indicate just now; as the Land Revenue Commissioner has indicated, 'favourable orders' will be

passed. I might say that even the extent of the favour seems to have been very intelligently anticipated by the mover of the motion. I do not wish to say more now.

MR. M. SIVATHANU PILLAI: Sir, there is only one matter on which I am disappointed a bit. I heard the Land Revenue Commissioner to say that the reports from the Taluk Cutcherries, with respect to the extent of the lands which were lying fallow during the last Kanni crop, have not yet been called for.

MR. M. RAMACHANDRA RAO: I beg to correct him, Sir; the reports have been called for; only I have not received them yet.

MR. M. SIVATHANU PILLAI: Sir, I can fully realise the difficulty of the taluk authorities in preparing those reports, especially in regard to the lands within the commanded area; because, the rules do not provide for remission being granted for such lands so as to make it incumbent on them to inspect them immediately and report. I would therefore request the Land Revenue Commissioner to call for a list of the lands in respect of which applications have been made for fallow remission during Kanni last. Anyhow, Sir, I hope the Land Revenue Commissioner will expedite his report to Government, and the Government will pass favourable orders without further delay. Lastly, Sir, I heard with great joy the assuring words of the Land Revenue Commissioner and those by the Dewan in respect of Mr. George's report. Before I beg leave of the House to withdraw my motion, I may be permitted to qualify the word 'favourable' in the Dewan's announcement as 'very favourable', so far as the Government orders on Mr. George's report are concerned.

I have great pleasure to withdraw the motion on such assurance.

MR. K. NARAYANAPERUMAL NADAR: With all emphasis I can command, I oppose the withdrawal. I demand a poll.

PRESIDENT. There are two or three stages before a poll can be demanded. The honourable member is perfectly within his rights in opposing leave being granted for the withdrawal of the motion. The next stage is to demand for the question, of such leave being granted, being put to vote. It is only after the vote is over that a poll might be demanded.

The question that Mr. Sivathanu Pillai be granted leave to withdraw the motion was put to vote and carried.

MR. K NARAYANAPERUMAL NADAR; I demand a poll.

A poll was taken and the House divided as follows:—

AYES—41.

1. Mr. Kottalil P. Abraham
2. ,, P. C. Adichan
3. Sahib Bahadur V. Chandamiah
4. Mr. S. Chattanatha Karayalar
5. ,, M. L. D'Cruz
6. ,, E. E. Pandarathil

7. Mr. D. Francis
8. ,, M. Govinda Pillai
9. Dr. C. R. Harler
10. Mr. M. L. Janardana Pillai
11. ,, N. John Joseph
12. ,, M. P. Joseph
13. ,, K. C. Karunakaran
14. ,, T. C. Kesava Pillai
15. ,, T. T. Kesavan Sastri
16. ,, K. P. Kochukora Tharakan
17. ,, Kaviyoor K. K. Kochukunju
18. ,, S. Krishna Aiyar
19. ,, Puthupalli S. Krishna Pillai
20. ,, Thariathu Kunjithommen
21. ,, K. G. Kunjukrishna Pillai
22. Vaidyasastra Kusala Mrs. Lukose
23. Mr. P. V. Mathai Chemparathy
24. ,, S. Narayana Pillai
25. Mr. V. Narayana Pillai
26. ,, K. R. Narayanan
27. ,, R. Narayanan Namboodiri
28. ,, P. G. Narayanan Unnithan
29. ,, M. K. Nilakanta Aiyar
30. ,, Kainikkara M. Padmanabha Pillai
31. ,, J. E. A. Pereira
32. ,, P. Parameswaran Pillai
33. ,, M. Ramachandra Rao
34. ,, N. Ramakrishna Pillai
35. ,, Codiveetil C. Ramankunju
36. ,, P. Sivarama Pillai
37. ,, M. Sivathanu Pillai
38. ,, G. B. E. Truscott
39. ,, E. P. Varghese
40. ,, Puliyoor T. P. Velayudhan Pillai
41. ,, N. Velu Achary

NOES—1.

Mr. K. Narayanaperumal Nadar—1.

NEUTRALS—2.

1. Mr. C. Jebamony Nadar. | 2. Mr. P. Narayana Kurup.

The adjournment motion was, by leave, withdrawn.

PRESIDENT : The House will now adjourn and meet again at 11 O' clock tomorrow.

The House adjourned at 3-30 P. M.

A. GUNAMONY,
Secretary to the Sri Mulam Assembly.

PROCEEDINGS
of

THE TRAVANCORE SRI MULAM ASSEMBLY.

(*OFFICIAL REPORT.*)

SECOND ASSEMBLY.

FOURTH SESSION 1939/1114.

Saturday the 11th February 1939/29th Makaram 1114.

The Assembly met again in the Legislative Chamber, at two of the clock, Dewan-President presiding.

MEMBERS SWORN.

The following members took the oath and signed the rolls :

Mr. M. K. Gopala Pillai ;

Mr. K. R, Narayana Aiyar.

QUESTIONS AND ANSWERS.

Grant-in-aid Dispensaries.

18 *MR. K. P. KOCHUKORA THARAKAN (*Kunnatnad* cum *Parur*): Will the Government be pleased to lay on the table a statement of the dispensaries in Travancore receiving grant-in-aid from Government giving therein the following particulars :

(1) the taluk where the dispensary is situated ;

(2) the pakuthi where the dispensary is situated ;

(3) the name of the doctor of the dispensary and the amount of grant awarded ; and

(4) the examination qualification of the doctor in the dispensary ?

VAIDYASASTRAKUSALA DR. (MRS.) M. POONEN LUKOSE (*Surgeon General*) : The *statement is placed on the table.

Amount of money spent towards pension.

19 *MR. KOTTALIL P. ABRAHAM (*Muvattupuzha* cum *Devicolam*): Will the Government be pleased to state :

(*a*) the amount of money spent by them during 1113 towards pension ;

(*b*) the percentage of the ordinary revenue of the Government during 1113 spent by them in the same year towards pension ; and

(*c*) the amount of money spent by them towards pension during the years 1095, 1100, 1105, and 1110 ?

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*Vide Appendix I.

MR. M. GOVINDA PILLAI (*Financial Secretary to Government*) :

(*a*) Rs. 19,51,251.

(*b*) 7.5 per cent.

(*c*)

Year.	Amount.
1095	Rs. 8,18,166.
1100	Rs. 9,47,355.
1105	Rs. 12,45,124.
1110	Rs. 16,38,770.

MR. K. P. KOCHUKORA THARAKAN : ൧൦൯൫-ൽ പെൻഷൻ വകക്ക് ചിലവായ തുക ൮,൧൮,൧൬൬ രൂപാ ആയിരിക്കെ ൧൧൧൦-ൽ അതു് ഇരട്ടിയായി വർദ്ധിച്ചു കാണുന്നു. ഇങ്ങിനെ വരുന്ന വർദ്ധനവിനെപ്പററി എന്തെങ്കിലും ചെയ്യണമെന്ന് ഗവൺമെൻറ് വിചാരിക്കുന്നില്ലേ?

MR. M. GOVINDA PILLAI : ഇപ്പോൾ അതിനെപ്പററി യാതൊരു സ്കീമും ഗവൺമെൻറിൽ ഇല്ല.

MR. K. P. KOCHUKORA THARAKAN : ക്രമാതീതമായ ഈ വർദ്ധനവിനെ ക്രമീകരിക്കണമെന്ന് ഗവൺമെൻറ് വിചാരിക്കുന്നുണ്ടോ?

MR. M. GOVINDA PILLAI : ഗവൺമെൻറ് അതിനെപ്പററി ആലോചിക്കുന്നതാണ്.

Licenses for the collection of lime-shells.

20 * **MR. N. NARAYANA KURUP** (*Ambalapuzha* cum *Shertala*) : Will the Government be pleased to state.

(*a*) the number of licenses issued for the collection of lime-shells in Kumarakam and Kainakari pakuthies for the year 1114 ;

(*b*) whether the licenses are given to the collective benefit of the co-operative societies there, or to the several individuals composing the same ;

(*c*) if it is intended for the benefit of the former, in whose name the licenses are issued ;

(*d*) whether they have received any complaint regarding the issue of such licenses by the Inspector of Fisheries severally to the members of the society, rather than to the Secretary and that the former gravely undermine the interest of the society as a whole by their acts of underselling etc ; and

(*e*) whether they have taken any action about such complaints and, if so, to what effect ?

MR. K. R. NARAYANA AIYAR (*Director of Agriculture and Fisheries*) :

(*a*) 180.

(*b*) Licenses for the co-operative societies at Kumarakam and Kainakari are given to the collective benefit of both the societies and the several members thereof.

(*c*) Licenses are issued in the names of the members as per the lists furnished by the societies.

(*d*) A few complaints have been received by the Director of Agriculture and Fisheries.

(*e*) They are under consideration.

MR. M. SIVATHANU PILLAI: May I know whether the Government are following any policy in the matter of issuing licenses for the collection of lime shells in those two taluks ?

MR. K. R. NARAYANA AIYAR: Yes.

MR. M. SIVATHANU PILLAI: May I know from the honourable member whether it is the Government's policy to issue licenses to individual co-operative societies when asked for ?

MR. K. R NARAYANA AIYAR: Yes, licenses have been issued to individual co-operative societies also.

District Munsiff's Court, Pattanamtitta.

21 *MR. PULIYOOR T. P. VELAYUDHAN PILLAI* (*Tiruva lla*) Will the Government be pleased to state:

(*a*) whether any of the Judges of the High Court or the District Judge, Quilon, has conducted a local inspection of the buildings in which the District Munsiff's Court, Pattanamtitta is now housed;

(*b*) whether any representation has been submitted to Government or the High Court by the public regarding the shifting of the present Court house;

(*c*) whether any report has been submitted to Government by the High Court, or to the High Court by the Quilon District Judge regarding the shifting of the Court house; and

(*d*) the steps taken by Government or the High Court in the matter?

MR. M. K. NILAKANTA AIYAR (*Ag. Chief Secretary to Government*):

(*a*) The building in which the Temporary District Munsiff's Court, Pattanamtitta, is housed, was inspected by a Judge of the High Court and by the District Judge, Quilon.

(*b*) A representation regarding the shifting of the present Court house has been received both by the Government and by the High Court.

(*c*) Yes.

(*d*) The matter is under consideration.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: With reference to part (c) may I know the date on which the respective reports have been submitted?

MR. M. K. NILAKANTA AIYAR: I shall supply the information later.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government whether the reports are in favour of the shifting of the court house from the present building to another building ?

MR. M, K. NILAKANTA AIYAR: The High Court raised the query as to whether the Vernacular and the English school buildings available at Pattanamtitta could be used for the Munsiff's Court. The information was ascertained from the Director of Public Instruction and he answered in the negative. That was communicated to the High Court,

Petitions for conciliation of debts.

22 * MR. S. NARAYANA PILLAI (*Quilon* cum *Kottarakara*): Will the Government be pleased to lay on the table a statement showing the total number of petitions for conciliation of debts presented before the Conciliation Boards, the total sum involved, and the total number of debtors and creditors involved, till 1-6-1114?

MR. M. K. NILAKANTA AIYAR: *A statement furnishing the required information is laid on the table.

Travancore Credit Bank.

23 * MR. S. NARAYANA PILLAI (*Quilon* cum *Kottarakara*): Will the Government be pleased to state:

(*a*) whether the Travancore Credit Bank has commenced business;

(*b*) if the answer to (*a*) is in the negative, the reasons therefor;

(*c*) whether Industrial and Agricultural loans and other loans are being granted by the departments concerned as before; and

(*d*) whether applications are being received by the Credit Bank and, if so, their number and the amounts applied for?

MR. M. GOVINDA PILLAI: (*a*) Yes.

(*b*) This does not arise in view of the answer to (*a*).

(*c*) Yes.

(*d*) Yes; it has been ascertained that until the end of December 1938, 49 applications for an aggregate loan of Rs. 5,24,750 have been received.

Qualification of the Anchal Superintendent.

24 * MR. S. NARAYANA PILLAI (*Quilon* cum *Kottarakara*): Will the Government be pleased to state the qualification of the present Anchal Superintendent?

MR. P. G. NARAYANAN OONNITHAN: (*Ag. Secretary to Government*): He is a graduate and an experienced official.

Inspection work of the Anchal Superintendent.

25 * MR. S. NARAYANA PILLAI (*Quilon* cum *Kottarakara*): Will the Government be pleased to state the number of times the Anchal Superintendent has visited the different taluks for inspection work, since his appointment as such?

MR. P. G. NARAYANAN OONNITHAN: *A statement furnishing the information is laid on the table.

Ayurvedic Inspector.

26 * MR. P. NARAYANA PILLAI (*Mavelikara* cum *Kunnathur*): Will the Government be pleased to state:

(*a*) whether any person has been sent to the Calcutta Ayurvedic College for higher studies in Ayurvedic Medicine;

(*b*) if so, whether that person has passed the examination; and

(*c*) whether, since his return any other person has been appointed as Ayurvedic Inspector?

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* *Vide* Appendix II. page 134

* *Vide* Appendix III. page 134.

MR. P. PARAMESWARAN PILLAI (*Ag. Secretary to Government*): (*a*) No.

(*b*) and (*c*). In view of the answer to part (*a*) these do not arise.

MR. P. NARAYANA PILLAI: May I know from the Government whether any person was sent on Government scholarship for higher studies in Ayurvedic medicine?

MR. P. PARAMESVARAN PILLAI: Yes, a stipend was granted to a student.

MR. P. NARAYANA PILLAI: May I know the name of that gentleman?

MR. P. PARAMESVARAN PILLAI: One Mr. M. N. Kesava Pillai.

MR. P. NARAYANA PILLAI: May I know whether he has passed any examination?

MR. P. PARAMESVARAN PILLAI: Yes.

MR. P. NARAYANA PILLAI: May I know whether Ayurvedic Inspectors were appointed since his return?

MR. P. PARAMESVARAN PILLAI: There is only one Ayurvedic Inspector. No Inspectors were appointed.

Dispensary at Nooranad.

27 * **MR. P. NARAYANA PILLAI** (*Mavelikara* cum *Kunnattur*): Will the Government be pleased to state:

(*a*) whether they have accorded sanction for a dispensary at Nooranad;

(*b*) how long it is since such sanction was made;

(*c*) whether any further steps have been taken on the same; and

(*d*) what is the distance of that place from Kayamkulam, Adoor and Mavelikara towns, respectively?

VAIDYASASTRAKUSALA DR. (MRS.) M. POONEN LUKOSE: (*a*) No. The question was considered and it has been ordered to lie over for the time being.

(*b*) and (*c*). In view of the answer to part (*a*) these do not arise.

(*d*) The distance from Nooranad to Kayamkulam is 8½ miles.

Do.	Do.	to Adoor 8 miles.
Do.	Do.	to Mavelikara 11½ miles.

MR. P. NARAYANA PILLAI: May I know the reason why this place is not being provided with a dispensary?

VAIDYASASTRAKUSALA DR. (MRS.) M. POONEN LUKOSE: The Government ordered that the question of opening a dispensary at Nooranad shall lie over for the present because many representations had been received from different parts of the State for the opening of dispensaries. It was thought unwise to open dispensaries in a haphazard manner. A scheme has to be evolved in this connection and such places as are in real need of dispensaries will then be considered.

Filarial survey in Eraniel.

28 * MR. C. JEBAMONY NADAR (*Kalkulam* cum *Vilavankod*): Will the Government be pleased to state:

(*a*) whether filaria is prevalent in the town of Eraniel, Kalkulam taluk;

(*b*) whether any investigation regarding the nature of the disease and the extent to which it has affected the town, has been conducted by any officer of the Government; and

(*c*) whether any steps have been taken to check the further spreading of the disease and improve the sanitary condition of the place?

MR. M. K. GOPALA PILLAI (*Director of Public Health*): (*a*) Yes.

(*b*) Yes.

(*c*) Yes.

MR. C. JEBAMONY NADAR: With reference to part (*c*) of the answer may I know the nature of the step taken in the matter?

MR. M.K.GOPALA PILLAI: Soon after the investigation, mosquito control measures were adopted in the Eraniel Conservancy town; but no local co-operation was forth-coming sufficiently. So the work had to be stopped temporarily. The question will be considered again when funds become available.

Appendix I.

***Vide* Answer to Question No. 18.**

Statement of Grant-in-aid Dispensaries.

No.	Name of Dispensary.	Taluk.	Pakuthi.	Name of Doctor.	Amount of monthly Grant.	Examination qualification of the Doctor.	Remarks.
					S Rs.		
1	Grant-in-aid Dispensary, Bonami ...	Peermade	Peermade	Mr P. K. Kurien	100	L. M. P. (Bombay)	
2	,, Granby ...	Do.	Do.	Dr. C. J. Muller Mr. P. P. Oommen	100	L. R. C. P. & S., M. R. C. S. L. M. P.	
3	,, Chittuvarai ...	Devicolam	Kannan Devan	Dr. D. Finlayson Mr. G. D. Dawson	100	M. B Ch. B. (Edin.) L. M. P.	
4	,, Munnar ...	Do.	Do.	Mr. David P. Sathia-vasagom	100	L. M. P.	
5	,, Periyakanal ...	Do.	Pooparai	Mr. A J D. Pandian	100	L. M. P.	
6	,, Kalthurithy ...	Shencotta	Puliyara	Dr. N. P. Pillai Mr P. T. Mathew	100	M B Ch. B. L. M. P.	
7	,, Puliyara ...	Do.	Do.	Mr. P. C. Chinnanja Pandian	50	L. M. P.	
8	,, Idappally ...	Parur	Idappaly Vadakkum-bhagom	Mr. P. Velayudhan Nair	35	B. A., M. B. B. S.	
9	,, Angamali ...	Kunnathunad	Kothakulan-gara	Mr. Mathew V. Mani-cheth	50	L. M. P.	

Appendix II.

Vide Answer to Question No. 22.

Statement showing the total number of petitions for conciliation of debts presented before the Conciliation Boards, the total sum involved and the total number of debtors and creditors involved, till 1-6-1114?

Total number of petitions for conciliation of debts presented before the Conciliation Boards till 1-6-1114. Rs.	Total sum involved in those petitions. Rs.	Chs.	C.	Total number of debtors. Rs.	Total number of creditors. Rs.
5,009	74,44,144	25	10	7,076	23,609

Appendix III.

Vide Anwer to Question No. 25.

Statement showing the number of times the Anchal Superintendent has visited the different taluks for inspection work.

	Names of Taluks.		*No. of times.*
1	Thovala	...	4
2	Agasteeswaram	...	9
3	Kalkulam	...	9
4	Vilavancode	...	9
5	Neyyattinkara	...	8
6	Trivandrum	...	8
7	Nedumangad	...	7
8	Chirayinkil	...	8
9	Quilon	...	7
10	Karunagapally	...	7
11	Karthigapally	...	5
12	Kunnathur	...	6
13	Kottarakara	...	8
14	Ambalapuzha	...	6
15	Mavelikara	...	5
16	Thiruvalla	...	8
17	Pathanamtitta	...	3
18	Pathanapuram	...	7
19	Shencotta	...	5
20	Changanacherry	...	5
21	Kottayam	...	8
22	Sherthallai		5
23	Vycome	...	5
24	Meenachil	...	3
25	Muvattupuzha	...	5
26	Kunnathunad	...	8
27	Thodupuzha	...	2
28	Parur	...	6
29	Devicolam	...	1
30	Peermade	...	1

CONDOLENCE RESOLUTIONS AT THE DEMISE OF H. H. THE GAEKWAR OF BARODA AND HIS HOLINESS THE POPE PIOUS XI.

MR. S. KRISHNA AIYAR ; I beg leave to make a reference to the passing away of two great world personalities, His Holiness Pope Pius XI and His Highness Sir Sayaji Rao, the Gaekwar of Baroda and wish to move the following resolution :

" That this House places on record its feelings of profound sorrow over the sad demise of the Maharaja Sir Sayaji Rao, the Gaekwar of Baroda and request the President to convey---

MR. K. NARAYANAPERUMAL NADAR : Sir, I did not hear the member, not even one word of his.

PRESIDENT : Mr. Krishna Iyer's professional experience in speaking louder will be adopted.

MR. S. KRISHNA AIYAR . It is not that I am not speaking loud enough for the members to hear, but the resonance of this Hall, which is rather –

PRESIDENT : As a matter of fact that has been noted and it will be set right.

MR. S. KRISHNA AIYAR : I shall read as loud as possible. The following is the text of the resolution :—

" That this House places on record its feelings of profound sorrow over the sad demise of the Maharaja Sir Sayaji Rao, the Gaekwar of Baroda and request the President to convey the sympathy of the House to Her Highness the Maha Rani, the present Gaekwar Maharaja Prathab Singh and other members of His family. "

It may be pertinent to make a few observations about the life and career of that great personality. His Highness's career has always been a romantic one. He was born a commoner. At the age of 12 he was adopted by the Maharaja Muthar Rao Gaekwar of Baroda. For almost a year he passed his life in something like a prison, during the reign of his elder brother. He then became the Ruler, the distinguished Ruler of a Sovereign State. In Europe and America, he is referred to as the richest of Indian princes. He held the world's record for oriental splendour. During his administration, free and compulsory primary education was introduced and worked with success in the Baroda State. His administration is also noteworthy for the inauguration and success of the Library Movement. In 1936 he celebrated his Jubilee at the sixtieth year of his administration when he made a donation of one crore of rupees towards the uplift of the depressed classes. In many other ways he has distinguished himself. He presided over the World Federation of Faiths. Baroda and Travancore have been connected in more than one way. For the uplift of the State from its backwardness to its present modern position, Travancore lent Baroda the services of that great and distinguished Statesman, Sir T. Madhava Rao. To come down to pathos, Baroda has been indebted to Travancore in recent time for the development of tapioca cultivation. With these few words I beg to commend the resolution to the unanimous acceptance of the House.

MR. N. V. JOSEPH: Sir, I beg to move the following resolution for the acceptance of the House :—

"This House places on record its deep sense of sorrow at the demise of His Holiness Pope Pius XI and extends its heart-felt condolence to the Catholic Church in the loss she has sustained by the passing away of one of the greatest of Popes."

"Sir, it is the most painful duty of mine today to move this motion for the acceptance of this House. Myself being a son of the Catholic Church you can realise with what feelings I stand up at this moment to speak a few words on "Our Holy Father" as we Catholics call him. By his death the Catholic Church has lost one of the greatest of Popes known to history and the world has lost one of the greatest of men.

I need not remind this House that the Pope is the Supreme Pontiff of the Catholic Church whose members come up to nearly 400 millions. It can be truly said that the sun never sets on the Catholic Church. It has its adherents in every climes and in every country and among all the races of mankind. It is not only international but it is even super-national. It is not mine on this occasion to dilate upon the greatness of that time-honoured, moral and religious institution which claims to stand for Glory of God in the Highest and peace for men of good-will on earth.

His Holiness Pius XI was elected to the Papal Throne in 1922, Feb. 6 and tomorrow is the Papse day to be celebrated all over the world. His Pontificate had to face all the upheavals that have come as the aftermath of Great War. Europe and consequently the whole Christendom and more or less the whole world has begun to see the mortal conflicts between Bolshevism and Fascism, the far-reaching effects of which on the social order of things lie hidden in the laps of Gods. His Holiness the Pope had to come face to face Mussolini, that man of destiny on the issue of what was known in diplomatic world as the "Great Roman" question. The solution of that question is the finest record of the Statesmanship of Pius XI. As the result of that settlement the Pope has become an independent secular sovereign although the area of his territory will not come up to even a square mile, if I am not mistaken. The Catholic world cannot but feel the loss of Pius XI at this juncture. If I speak on the personal greatness and achievements of the supreme Pontiff, I can go on for days together.

I have touched, however meagrely it may be, upon the greatness of the Institution which his Holiness was representing and upon his personal greatness. These are sufficient reasons for this House to accept this motion. But that is not all. We in Travancore have our own particular reasons for bereavement. Out of the 16 lakhs of Christians in Travancore 8 lakhs are Catholics and Pius XI was their supreme religious head.

Christianity has been in our country from the first century of the Christian Era and it is one of the proudest pages in the illustrious history of our Royal Family that the Travancore Government have—I may be permitted to say—adopted them as their own children. The

Sovereigns of Travancore though they are Hindus, why should I say though, I will say because they were Hindus, have not only tolerated but welcomed them. It is but an historical fact that it was a Maharaja of Travancore who permitted that great Catholic Apostle St. Francis Xavier to preach Christianity among the fisherfolk of South Travancore and helped him even with money.

I believe the Catholic subjects of His Gracious Highness the Maharaja fully realise these circumstances as one of their co-religionists, that Flemish General De La Noy, the loyal servant of the great Marthanda Varma had done in days of old.

Last, but not least, of the reasons why this House should pass this motion is the most cordial, not only official, but personal relationship that has existed between His Gracious Highness our beloved Maharaja and His Holiness the Pope Pius XI. It will certainly go into the history of the World that even though before the time of His Gracious Highness Sri Bala Rama Varma Maharaja there had been official contacts with our sovereigns and the Popes it is destined to His Gracious Highness our beloved Maharaja and His Holiness the Pope Pius XI to have an interview in person. The House will recall that during the European tour of His Highness the Maharaja and Their Highnesses the Maharani and the first Princess, our Royal Family paid a visit to His Holiness Pius XI and how cordial was that interview. Hence it is only proper and in the fitness of things that this House, which is the creation of His Highness the Maharaja, to pay their homage to the great soul of the departed supreme pontiff. With these words, I request the House to accept this motion."

MR. E. P. VARGHESE: Sir, I associate myself with all the sentiments, expressed by the honourable members Mr. S. Krishna Aiyar and Mr. N. V. Joseph in moving the condolence resolutions.

Sir, in the death of His Highness the Gaekwar of Baroda, India has lost one of the brilliant rulers and one of the greatest of statesmen. It was during his time that Baroda came to the forefront of the Indian States. It was during his time that primary education was made compulsory and free in Baroda. As the honourable mover said, he bestowed his attention upon the uplift of the depressed classes and he was a great champion of their cause. It is said that Dr. Ambedkar, that stalwart protagonist of the depressed classes, was educated by the Gaekwar. He was one of the rulers who had the longest experience as a ruler among his contemporaries. It was given to him to rule over his country for many years and benefit the country with his benevolent rule and set an example of what a monarch's rule is in uplifting the condition of the people committed to his care. I do not now wish to dilate upon the very many acts of the administration which will go down to history as monuments of the beneficent rule of a benevolent monarch.

I too being a member of the Catholic Church, it is not proper for me to speak of the greatness of its religious head. Pope Pius XI was the 260th successor of the Church. He was born on 31st may 1857 and was elected Pope, as said by the mover of the motion, on the 6th February 1922. Catholic Church was to celebrate the Pope's Day tomorrow

[Mr. E. P. Varghese]:

and strangely enough the sad news came that the Pope has passed away. He was a great scholar. He was the librarian of that famous library in Vatican and his encyclicals as Pope bear testimony to the scholarship that he attained during these years. He was not only a religious head, not only fond of books but also a great statesman and a mountaineer. On one or two prior occasions it was heard that he was dangerously ill. But his vitality as an Alpine climber stood in good stead and he survived. But at last the day has come when he was to pass away. In his death, I am sure not only the Catholic Church but the whole world has lost a great man. When nations were fighting with each other it was his voice that stood up for justice irrespective of caste or creed, nation or race. He protested against the treatment accorded to the Jews in Germany and the Catholics there. His statements have been bold and straightforward. On the question of labour and capital and the social order his encyclicals gave the right lead. His views on education of youth are also worthy of note. He was a staunch fighter against the evils of communism and he spared no time in condemning the atheistic influence of communism. In the passing of a great man, apart from being the head of the greatest denomination that exists in the world, the world has lost a great man. I feel that it is in the fitness of things that this House pass these condolence resolutions in the passing away of one of the greatest sons of the world and one of the greatest sons of India.

MR. N. RAMAKRISHNA PILLAI: I wish to say a few words on this motion. His Highness the Gaekwar of Baroda has been able to set an example to the other ruling princes of India. During his period of administration, he was able to achieve a good many things in his country. He was one of the greatest rulers. In his death India has sustained a great loss.

His Holiness the Pope is the supreme spiritual head of a large section of the intelligent and enlightened section of His Highness the Maharaja of Travancore. His supremacy and jurisdiction are not confined to any particular community. That transcends limits of countries. His life has been for the benefit, welfare and happiness of mankind. The name of His Holiness the Pope will always be cherished in the minds of a large section of His Highness' subjects in Travancore. The cordial relationship that has existed between the Royal Family and the Pope is wellknown. His Holiness the Pope met in audience with their Royal Highnesses. His Highness the Maharaja of Travancore was the first to cross the seas and meet the Pope and to receive his blessings. His career has been distinguished by his statements for the cause of truth under Mussolini and also on account of his strenuous efforts for the cause of peace in the world. In his death world has become poorer. Sir, I respectfully second the motion that has been brought forward.

MR. KAINIKARA M. PADMANABHA PILLAI: Sir, I also wish to associate myself with the sentiments expressed by my predecessors. In His

Highness the Gaekwar of Baroda, India has lost not merely one of the most conspicuous of rulers but one of the most admired and respected among the princes of India. He succeeded to the throne long before, I believe, before any one in this Assembly was born. His experience as an administrator has been unrivalled and his long rule has marked an era of continuous and ever increasing prosperity to his State. The early attention he bestowed on the educational advancement of his country and the emphasis he laid on the need for primary education and the establishment of a broad and Scientific library System have brought his people in the matter of education on a par with the most advanced states of India. He has been in more than one way the model for the other princes to follow. And today when the Indian states have to face important all-India problems the disappearance of an experienced administrator, and an able ruler like His Highness the Gaekwar is to be deeply regretted I sincerely join with the mover of the motion and express the regret of this Assembly in that instance.

Now, turning to the other motion that was moved here let me also express the most sincere sorrow at the very sad news we had today Though not myself a Catholic, not even a Christian in the ordinary sense, I believe, as a Hindu and as Travancorean I am behind no one in feeling the deep sense of sorrow on the sad demise of His Holiness the Pope. I have had occasion to move intimately with members of the Catholic clergy as a student, and I know they always have an affectionate corner in their heart for Travancore. And His Holiness the Pope had always a very warm corner in his heart for this country. We had occasions that showed us that his Holiness the Pope loved Travancore and His Highness the Maharaja of Travancore. Moreover Travancore is a country where the Catholic community is one of the most important communities and as such his relations with our State was doubly important. And as a Travancorean I share the sorrow that has fallen upon the sister community. Again as a Hindu who looks upon all religions as leading towards the salvation of humanity, and as one who can draw inspiration, spiritual and religious, from every prophet and look upon him as an Avathar of God, I give the expression to my heart-felt sorrow on the demise of a Great man who was not only the custodian but the symbol of the highest and most ancient traditions of one of the important religions of this world. With these words I support the motions before the House.

MR. T. T. KESAVAN SASTRI (*Nominated*) : സർ, ദിവംഗതരായ ബറോഡാ മഹാരാജാവു് തിരുമേനിയുടെയും മാർപ്പാപ്പാ തിരുമേനിയുടെയും പേരിൽ അനുശോചനം രേഖപ്പെടുത്തിക്കൊണ്ടുള്ള പ്രമേയങ്ങളെ സഗ്ഗിരക്കമ്പം അനുമോദിക്കുവാൻ ഞാൻ അതീവ താൽപ്പര്യമുള്ളവനാണു്. സാമന്തരാജാക്കന്മാർക്കു മാതൃകാപുരുഷൻ എന്ന സുപ്രസിദ്ധി സമ്പാദിച്ചിട്ടുള്ള മഹാനായ മഹാരാജാവു് ഭൂലോകസുപ്രസിദ്ധമായ ക്ഷേത്രപ്രവേശനവിളംബരംകൊണ്ടു് സകല ജനങ്ങളുടെയും അഭിനന്ദനത്തിനു

[Mr. T. T. Kesavan Sastri].

പാത്രീഭൂതനായ നമ്മുടെ ചിത്തിരതിരുനാൾ തിരുമേനിയെപ്പോലെ സകല ജനങ്ങളുടെയും അഭിനന്ദനം യഥാവിധി ആർജ്ജിച്ചിട്ടുള്ള ഒരു തിരുമേനിയാണെന്നുള്ളതു് ഇവിടെ നടന്ന അഭിപ്രായ പ്രകടനങ്ങളാൽ സദസ്യർ മനസ്സിലാക്കിയിരിക്കുമെന്നു ഞാൻ വിശ്വസിക്കുന്നു. ഭാരതീയരായ പിന്നോക്ക സമുദായക്കാർക്ക് ആലോകാന്തം സ്മരിക്കത്തക്ക വിധത്തിൽ സർവഥാ പൂജിതനായ ബറോഡാ മഹാരാജാവു തിരുമേനി അപ്രതീക്ഷിതമായി ഇഹലോകവാസം വെടിഞ്ഞതു് അവരിൽ നിരന്തരമായ സ്മരണയെ ഉളവാക്കുന്നതാണു. സർവഥാ ലോകാരാധ്യനായ മാർപ്പാപ്പാ തിരുമേനിയുടെ പേരിൽ അനുശോചനം രേഖപ്പെടുത്തുക എന്നുള്ളതു പ്രാമാണ്യമേറിയ ഒരു സംഭവമായിട്ടാണു ഞാൻ കരുതുന്നതു്. അതുകൊണ്ടു ഈ പ്രമേയങ്ങളെ ഞാൻ സർവഥാ അനുകൂലിക്കുന്നു. ആ പുണ്യാത്മാക്കളുടെ ആത്മാവിനു സർവമംഗളങ്ങളും ആശംസിക്കുന്നതിൽ പ്രത്യേകം പ്രേരിതനായിക്കൊണ്ടു ഇവിടെ അവതരിപ്പിച്ച പ്രമേയത്തോടു അനുകൂലിച്ചുകൊള്ളുന്നു.

MR. M. K. NILAKANTA AIYAR (*Chief Secretary to Government*): We are today meeting when the world is poorer by the passing away of two great figures, His Highness the Gaekwar of Baroda and His Holiness the Pope Pius XI. On behalf of the Government of His Highness the Maharaja of Travancore, I associate myself with the resolutions moved and the sentiments expressed by the members on the floor of this House. Born on the 10th March 1863 His Highness the late Maharaja Gaekwar of Baroda was called to the Gadi in the year 1875 at the very early age of 12 and was invested with ruling powers in 1831 on completing 18 years of age. When His Highness came to the Gadi, Baroda was much different from what it is now. Under the able guidance of an administrator like the late Sir, T. Madhava Rao of revered memory and of Mr. F. A. H. Elliot, his tutor, His Highness imbibed great sagacity and far-sightedness which characterised him as a ruler. The modern Baroda is the making of His Highness.

Throughout the long rule of 63 years His Highness set a high ideal of service before him. He established free and compulsory primary education, fought against anti-social practices like untouchability, pardah, child marriage and forced widowhood encouraged the co-operative movement with a view to promote the rural prosperity in the State and revived cottage crafts and industries and thereby helped to promote the interests and welfare of His Highness' subjects in various directions. At the Round Table Conference he played an important part. His strength as a ruler was not only in his own personal integrity and zeal but also in his ability to secure the selfless services of a line of able administrators.

I shall be failing in my duty if I do not refer to the friendly relations that subsisted between Their Highnesses of Baroda and Travancore. His Highness the Gaekwar visited Travancore in July 1915 and stayed for about 12 days in the State when our Gracious Maharaja was but a child. Some of us could recall the opinion expressed by His Highness the Gaekwar and Her Highness about our Maharaja and Maharani.

Friendly relations have been subsisting for several centuries between the Holy See of Rome and the Travancore State. The vast majority of the Christian subjects of His Highness the Maharaja of Travancore are members of the Catholic Church. The relations between the Holy See and the State have been drawn closer during the reign of the present Maharaja. As recently as 1933 during the course of His Highness the Maharaja's tour His Highness accompanied by the present Dewan paid a visit to His Holiness Pious XI. Not only was His Highness received with courtesy by His Holiness on that occasion but since then also His Holiness had been so solicitous about His Highness that whenever a Bishop from this land visited His Holiness he used to enquire particularly about His Highness and the Ruling family.

During the time of His Holiness important changes have been made in the ecclesiastical administration of the Catholic Church in this State. The ecclesiastical hierarchy has been more and more Indianised. One Archbishopric has been created in Trivandrum and two new dioceses one at Kottar and the other at Trivandrum have been established. His Holiness was a patron of learning and he took a keen interest in the educations and general welfare of the Catholics in particular including the Catholic subjects of His Highness the Maharaja.

I therefore on behalf of the Government associate myself entirely with the sentiments expressed by the honourable members on the floor of this House.

PRESIDENT: Before formally putting these two propositions to the vote and calling upon the honourable members of this legislature to signify their sentiments in the usual manner, it may not be out of place for me, as one who had the privilege of personal acquaintance with both the notable personages whose lamentable demise has been adverted to, to say just a few words.

So far as His Highness the Maharaja of Gækwar was concerned, I do not desire to say much about his career and his achievements, because that career and those achievements are part of modern Indian History. It is sufficient for me to point out and for us all to remember that in many directions His Highness the Maharaja Gækwar was a pioneer in the true sense of the word. He was a pioneer in the modern methods personal and intimate responsibility to his subjects over whom he ruled. He was a pioneer in breaking down age-long beliefs and outworn superstitions in the pursuit of what he considered the right path of true progress. He was a pioneer in the sense that along with a vivid sense of the unseen and with a deep religious belief in his religion he combined a belief in progress along modern lines. The manner in which

[President.]

he brought to bear in the administration of his great country his unrivalled experience and his great capacity for the solution of manifold problems that confronted him are matters for future historians to record with gratitude and with admiration. He was a pioneer in primary education, a pioneer in the library movement, a pioneer in social reform and rural reconstruction, he was a pioneer in the manifestation of vivid responsibility to the lowliest among his people regarding himself as their trustee and guardian of their welfare. May he rest in peace.

As for His Holiness—Pope Pius XI—I first met him when he was at Milan and thereafter I met him when he was in the Vatican. It has been stated to-day that it was my privilege to accompany His Highness during the interview which His Holiness the Pope gave to the Sovereign of this country, an interview during which he displayed a varied acquaintance with the problems and the conditions of Travancore, an interview which proved how vivid and continued was his interest in, and knowledge of, the State and of all that pertained to it. He was a very great, very brave, and very religious man. As a diplomatist he was unrivalled. The concordat between Italy and the Vatican was his work and it renewed the relationship, from the secular point of view, between Italy and the See of Rome, which was interrupted for many a long and wearisome years. It was he again, who against tremendous opposition, voiced the feelings of humanity when great turmoils permeated Europe. His inauguration of the Catholic Action Group was the result of both enlightened religion and great statesmanship.

It may not be known to many that one of his first reputations—he had many reputations—was that of a mountaineer. His Holiness the Pope's first book was his account of his mountaineering adventures in Europe. He was an authority on mountaineering. Next, he was one of the greatest authorities on Christian literature. After having acquired the reputation of a mountaineer, of a scholar, of a diplomatist, he acquired the reputation of an administrator as he was sent to Polland during the troublesome days of the Bolshevik invasion of Polland, and conducted his duties with conspicuous success.

It is right, as was pointed out, to put on record that his relationship with Travancore has been intimate in its friendly sympathy and was typical of true Catholicism. Let us signify our assent in the usual manner.

(The resolutions were passed *nem. con.* the whole House rising.)

ADJOURNMENT MOTION.

MR. T. C. KESAVA PILLAI: Sir, I beg to move the adjournment of the business of the House to discuss a definite matter of urgent public importance, *viz.*, the situation created among the people of Kalkulam and Vilavankod taluks regarding the scarcity of water for drinking and agricultural purposes. Sir, the subject of to-day's motion has been brought to the notice of Government on more than one occasion. Sir, in the past, Government was concentrating on the irrigation

question and this fact is borne out by Government proceedings and letters from the British Resident and some former Dewans of the State. During those days also real help was needed in South Travancore. Then, our eminent Chief Engineer, Mr. Horsely, whose health was sacrificed for Travancore did all he could to relieve the distress of the people.

The whole fact I shall put in two or three sentences. There is scarcity of water for drinking and for agricultural purposes. If any one of you would accompany me and see the plight of the people in South Travancore, excepting the area where it has been irrigated by the Kodayar project, I am sure, you would feel pity for the suffering agriculturists. There is no water to drink. At Kalikavila market, water is purchased at two chuckrams per *kudam*; at Marthandam the price is $1\frac{3}{4}$ chs. per *kudam* and also at Karingal. The Director of Public Health or anybody can impress Government with the seriousness of the situation. The people find it absolutely impossible to cultivate their lands. They do not cultivate anything. There is no paddy; there is no tapioca; there is no cocoanut. Sir, South Travancore is not an industrial area. They want their bare needs satisfied. They want to eat and drink. They do not ask for honey; they do not ask for toddy or alcohol; They ask for pure water from their Sovereign. Further, lands have been sold for arrears of tax and now in several areas Government themselves have become proprietors by taking the land. I say there is no political organisation within this area. It is unemployment, starvation and poverty that face these illiterate people. If the Government do not come to their rescue their condition will be most miserable.

Sir, recently the Minor Irrigation Regulation has been amended. The Minor Irrigation Committee published a report and Government have made an allotment of Rs. 10,000 for these taluks, namely, half of Vilavankod, whole of Neyyattinkara and half of Nedumangad. Unfortunately, not more than Rs. 2,000 has been spent during the course of the year. We have been asking the Chief Engineer in every meeting of this Assembly to look into the needs of the people of South Travancore. That unfortunate gentleman has the willingness to do something. In fact he has done. Like Mr. Horsely I had witnessed him walking three miles in Sun, in these parts when I asked him, he told me "No, Mr. Kesava Pillai, I must see the place myself." But, Sir, his subordinates, it is shame to say, have completely failed to do their duty. There is no Engineer who is in charge of the Kodayar project. This project is a capital scheme. There ought to have been suggestions for further equipment from the Engineer concerned. We public have no duty. I would request the Chief Engineer to hold an examination for the subordinates. Even if they be in service they, including the Assistant Engineers, should be asked to pass the examination in the first class. We will then get the right men in the proper place. Kodayar and Perinjani are the two schemes originally proposed. As a member of the Irrigation Committee I placed these facts before the committee. Fortunately, the Dewan was kind enough to order a committee full of non-officials with an official President. Unfortunately,

[Mr. T. C. Kesava Pillai.]

that official President is not finding convenience to give his attention to it. The amount allotted for restoration of the tanks is such that it is not possible to restore them in the next hundred years. I would strongly recommend to Government that they would convert the paddy fields of Nanjinad into garden lands so that the people may not pay taxes for paddy lands that no longer yielded paddy. In some taluks we find that the foolish ryots pay tax for paddy cultivation after having cultivated tapioca in the fields. While the tax per acre for ordinary tapioca land will only be four annas; the poor ryot is now paying Rs.10 because the land is classed as paddy land although there is no water to cultivate paddy. The intensity of feeling on the part of the ryots can very well be imagined, Sir.

Sir, in the place of the Tank Restoration Scheme, I would suggest diversion of the Kodayar water for the use of the people of Kalkulam and Vilavankod taluks. I submit, Sir, that the people of these taluks have the primary right for the Kodayar water ; the other taluks of the Division have only a secondary right, although my friend from Nanjanad including Mr. Sivathanu Pillai—strongly oppose my suggestion that Vilavankod should get some water.

MR. M. SIVATHANU PILLAI : Question ;

MR. T. C. KESAVA PILLAI : To supplement the irrigation facility in Nanjinad, what I would suggest is the construction of the Perunjani Reservoir. We want the Teekode extension to irrigate the lands of the Kunnatur Nattalam and other pakuthies. A perusal of the revenue records of the last twenty years would convince the Land Revenue Commissioner that these lands have been requiring remission of tax all these years.

Sir, having put forth my case in my own way, I may perhaps mention that the people of my constituency recently met me in a body and asked me to resign my seat in this House and join the State Congress ; because, they said, "Although you represent us in the Assembly you are not able to look to our needs." I told them "this time I shall place all the fac s before the Government; and if they refuse to do something for us, I shall immediately resign and go to some corner of the country and hide myself"; because, I shall not join the State Congress. Therefore, Sir, in the interests of my personal safety, I would request you to sanction immediately Rs.30,000 so that I may satisfy my people. They are prepared to surrender free all land necessary. They are also prepared to dig the smaller channels themselves. The whole work would be completed in three months. There is no necessity for any dam since we have a high level ridge at Triparappu. Sir, as I said yesterday, if we have one pot, we would put just some little rice and cook it; if we have ten pots, naturally, we can cook more rice. That is all what we laymen can say. It is for expert engineers to put their heads together, to study the old records and to suggest a suitable scheme. There are several reservoirs, Perunjani,..................................etc,

So much about water for irrigation purposes. Coming to our need for drinking water, due to want of water and starvation, we are having attacks of cholera and small-pox year after year. Last year, there was a provision of Rs. 5,000, in the Budget, for the sinking of wells, and a Section Officer investigated the question and submitted a report. He wanted Rs. 2 lakhs. Sir, if we had been given at least the Rs, 5000 we would have engaged lorries and distributed water to the suffering people. I would appeal to the Government to pass immediate orders for the sinking of tube-wells or for some other means of supplying good drinking water. Sir, it is a bare necessity. Here again, there is no political organisation it is the case of a representative of the people requesting the Government to relieve thousands of suffering people from their distress, I may perhaps mention, Sir, that the people of my constituency are ever ready to wait upon His Highness the Maharaja to pray for the redress of their grievances.

In regard to the question of remission, yesterday, while we were dealing with the question of karivu and tharisu remission, and the amendment of the remission rules, the Land Revenue Commissioner replied that the question was under consideration. I would earnestly request him immediately to call for a list of tharisu lands in the Vilavankod and Kalkulam taluks, lands which were lying fallow during the Kumbhom crop of 1114 as well as the Kanni crop of 1114. Equitably and morally, though not legally, the Government are under an obligation to remit the whole amount of tax so far as rain-fed lands are concerned. Our rains have not been more than rose-water which we get sprinkled over us in marriage houses; and such rains, while not enough to enable the plant to yield paddy for the ryot, were unfortunately enough to keep the plants alive. And that was enough for the Revenue authorities to report that the crop was successful. I would therefore make special request to the Land Revenue Commissioner to treat these lands as actual karivu and to recommend remission of at least 75 per cent of the dues. I do not think there is any necessity for me to dilate on the question any more since the Government themselves seem to have realised the difficulty of the people in this matter. Sachivottaman, during his tour to South Travancore, at last, said that the Government have realised the difficulties of the South Travancore ryots. Hitherto Sir, we, the people of Vilavankod, Kalkulam and Neyyattinkara, have been putting up a joint fight along with the people of Nanjinad; now the people of Nanjinad say "we have nothing to do with the people of Kalkulam, Vilavankod and Neyyattinkara." I would appeal to Government to order that the Minor IrrigationDivision should concentrate its attention on the Neyyattinkara and Vilavankod taluks and should spend the major portion of the present allotment for the benefit of these taluks. I include Neyyattinkara because a diversion from Triparappu would take the water, through various small diversion channels from the ridge at Triparappu, to Karakunnam and other places. From the ridge at Triparappu, there are various ridges branching away like ribs and vertibra. If the people find water at the top, of their own accord they would take it along small channels. If necessary, we are prepared to contribute 25 per cent of the cost of such a scheme, provided we are

[Mr. T. C. Kesava Pillai]

not asked to pay any water cess. If that is done, there would be no necessity in future years to grant any remission.

Sir, I have collected a lot of material. Although a layman, I am now confident that I can defeat any Engineer so far as water supply for South Travancore is concerned; because I have studied the papers and I know all details. It is open for any engineer, including Mr. Truscott, to test my technical knowledge.

With these words I place the motion for the acceptance of the House.

MR. K. NARAYANAPERUMAL NADAR: I support this adjournment motion. In so doing, if I refer to the scarcity of water in Muttam part of which belongs to the Kalkulam taluk, I would be serving a double purpose, because, I will be supporting this motion and also speaking on the resolution which I have to move on Monday, the 13th February 1939. I shall now confine my attention to scarcity of water in Muttam.

Sir, in no other place in South Travancore is scarcity of water so keenly felt as in Muttam. This question of supply of drinking water to Muttam has been engaging the attention of the Travancore Government for the last 25 years; but nothing substantial has been done yet. Sir, our Dewans although generally profuse in their promises, are slow in the fulfilment of their promises. So far as I know, there have been two schemes for the supply of water to Muttam. One is the Kuttikad channel scheme or the Muttam scheme. According to this scheme water can be supplied not only to Muttam but also to its suburbs. This scheme was prepared by one of our former able Executive Engineers, Mr. Krishna Aiyangar. I hear that the scheme has almost been abandoned; I do not know why. I would like to hear from the learned Chief Engineer whether the scheme is feasible, if so, its cost and other details.

The other scheme is the Kannamangalam Odai or Kannamangalam tank scheme. That tank or Odai is a mile or two away from Muttam and very near the Friday Market. The source of water is situated in such a place that even during the dry months of the year there will be enough of water. These are the two schemes.

In regard to both these schemes, the question is whether to take the water by pipe line or by open channels. I would like to have from the Chief Engineer the relative merits and demerits of these two methods of taking the water. I am told that the Kannamangalam scheme can not only supply drinking water to Muttam but can also irrigate about 150 or 200 acres of land. I would like to have details of the scheme from the Chief Engineer.

Interpellations Nos. 33 and 34 of mine deals with the scheme suggested by me in this connection. Water is an essential requisite for the support of plant and animal life. From these places water could be diverted for irrigation purposes. It is the paramount duty of the Government to see that good water is supplied to all places. The Madras Government has realised that. I also read in the newspaper recently that the Madras Government have a scheme for the supply of water with 10 or 15 years' time and they

say that within that period they hope to supply water to all the villages in the Madras Presidency. If such a plan is possible in Madras, it will be much more easily possible in Travancore for Travancore is smaller in area. It is only a little bigger than the Tinnevelly District. The Plan is good. But there must be willingness on the part of the Government. Where there is a will, there is a way is the saying known to all.

Two days ago when the report of the Public Accounts Committee was under consideration, I moved a resolution that it is not desirable to make much savings under Public Works. In some years, amounts provided under important works lapse. Such a state of affairs should not occur. Works done by the P. W. D. are very useful to the people. They are of lasting benefit to the people. Therefore, it is not desirable to make any savings under the items 'Capital Works' and "Reproductive Works." The Financial Secretary explained the other day that some savings happened owing to certain extraordinary circumstances which were beyond the control of Government. He made a new discovery as it were the other day. Is that a proper excuse? No. With these words I support the resolution before the House.

MR. M. SIVATHANU PILLAI: In making a few observations in regard to this motion, I may assure the honourable members that I have not got any big scheme as my friend, the mover, Mr. Kesava Pillai has and that too in such abundance in both of his pockets. I can only say that the Irrigation authorities have got a duty to think ahead and devise ways and means to provide for contingencies of such unprecedented drought as we have been experiencing for the last few years.

In the course of this debate the mover, Mr. Kesava Pillai and his seconder introduced several irrigation schemes both investigated already and left not being feasible and profitable and others not investigated but also introduced topics of highly controversial character. He said that Nanjinad ryots dispute the right over the water collected in Kodayar Reservoir by ryots other than Nanjinad ryots of South Travancore for purposes of irrigation. In the first place, let me remind my friend Mr. Kesava Pillai that after the completion of the Kodayar Scheme, almost all the tanks, in Nanjinad under the commanded area were auctioned away for fabulous amounts and credited to Government accounts, and thus the ryots of Nanjinad were rendered to depend only on Kodayar water, these former tanks having been taken from their hands. Mr. Kesava Pillai was rather militant out of sheer ignorance of the history of Nanjinad ryots in the Pre-Project days. He laid stress on the necessity of supplying good drinking water to people in his constituency of two taluks in South Travancore and I think that I am justified in referring to such needs of my taluks namely Thovala and Agasteeswaram. Water supply for agricultural and drinking purposes is absolutely necessary in some parts of my constituency. I am not unaware of the fact that the Government have taken up the investigation of water supply in the taluks of Vilavankod and Neyyattinkara and I understand that the investigation report is under the anxious consideration of the Government. Mr. Kesava Pillai said that the report contained an estimate of over 2 lakhs for carrying out works to supply

[Mr. M. Sivathanu Pillai.]

good drinking water. In this connection I may say that it is but fair that both the Investigation Division Officer and the Supervisor concerned did very good work and traversed the whole area and exhibited good physical ability in walking over all the places to find out suitable places for digging wells, connecting water channels, etc.,. What became of their report? I do not know. When asked, the Government say that the investigation has been made and it is being considered by Government. They give a graphic description of the proposed schemes and tempt us to envisage a millennium before us. This kind of reply from Government reminds me of the remark made by a responsible head of a Missionary Institution in South Travancore, regarding Rural reconstruction activities of the Demonstration Centre at Marthandam in South Travancore. He remarked, reviewing their activities, that their phrase Rural Reconstruction Demonstration Centre is a dreadful phrase thereby condemning the ability of their much-talked-of scheme. In other words, he hinted that there is much of saying and loud talk but nothing doing. Exactly the same way is with the Government who talk much in trotting out and parading big schemes but nothing tangible has been done to our expectations of their investigated schemes. It is high time that the Government realise the acute situation in which the people are put to. Some solution has got to be carried out before it is too late: I really appreciate the wonderful capacity of the Division and Section Officers who were engaged in the investigation in respect of supply of good drinking water. Even if the scheme costs two lakhs of rupees, as Mr. Kesava Pillai said, when once the Government are satisfied with the utility of the scheme, they should never hesitate to sanction such a proposal and get it carried out. During the debate of the budget for 1112, I heard the Dewan President's announcement that the Government were prepared to sanction amounts without even estimates previously prepared and approved and that Government have set apart a sum of Rs. 5,000 for restoring tanks. But in actual experience nothing was spent on the ground that Government sanction was not obtained beforehand. In other words, it reminds me of the old saying 'one can lead a horse to the river but twenty cannot make it drink'. However much the Government may think well of the people, the Executive officers make it ineffective. That means they require a good deal of driving in carrying out irrigation or supply of water schemes.

One word by way of reply to Mr. Kesava Pillai's contention that the ryots of Nanjinad have no better claim over the matter in the Kodayar Reservoir than the ryots of Vilavankod. If he wants to claim it for his people. I have no objection but only this suggestion to make. I make a sporting offer to him to take the reservoir exclusively for himself and his people, on condition that their old tanks are restored back to Nanjinad ryots and their present excessive and exhorbitant rate of tax for their lands is borne by ryots of his taluks. I am only

glad to make this sporting offer. Let his people take the Pachipara Reservoir and all its water with its today's reading 3 ft. of water. Let him not mistake things. The ryots of Nanjinad will be glad if he can then come to their rescue.

MR. K. NARAYANAPERUMAL NADAR: On a point of order. May I know whether the member is in order in referring to the needs of Nanjinad when the motion relates to supply of water for Kalkulam and Vilavankod for agricultural and drinking purposes. If that is allowed I too may be allowed to say something of my constituency also.

PRESIDENT: Mr. Sivathanu Pillai will please elucidate the substance contained in that point of order.

MR. K. NARAYANAPERUMAL NADAR: No, Sir. I want a ruling on the point of order.

PRESIDENT: Let me hear what Mr. Sivathanu Pillai has to say on the point.

MR. M. SIVATHANU PILLAI: I do not find any point in it.

PRESIDENT: The debate: as far as possible, should be within the four corners of the resolution.

MR. M. SIVATHANU PILLAI: So then, Sir, developing by way of argument, my point is this. Water is very essential both for drinking and agricultural purposes. It is common to all the taluks of South Travancore, which of course, includes, fortunately or unfortunately, Tovala and Agastiswaram as well, but with this difference. We, Nanjinad ryots, are not believers in a game of bluff. We believe in loyalty and refuse to believe in blackmail. We are not concerned, as Mr. Kesava Pillai, whether State Congress flourishes or is put down. Our caravan will move on, as usual, believing in the truth and justice of our cause. Places like Aramboly require good water for drinking purposes just like Kalkulam. Therefore, I am of opinion that a comprehensive scheme should be thought of in the matter of supply of water.

Of course, there are many schemes mentioned by Mr. Kesava Pillai and Mr. Nadar. A good number of schemes have already been examined by Government by their experts appointed by them from time to time. I request Government to take any scheme they please for purposes of execution. It is my request to the Chief Engineer also to sympathise with my taluks in the matter of procuring good drinking water. Along with this my suggestion is that the Department may think of restoring the tanks for purposes of storing water for agricultural purposes. It is a matter for the consideration of Government whether it is not desirable for Government to draw up a scheme whereby the supply of water for drinking purposes to all parts of the State may be spread over for a period of 10 or 15 years and carried out systematically and that portion by portion every year.

The present Irrigation Division with its head office at Quilon is doing useful work. There is also an Irrigation Committee formed recently in South Travancore. Doubts have arisen with regard to the extent of jurisdiction of the latter, the irrigation Committee of South Travancore. It has been contended that the taluk of Vilavankod and

[Mr. M. Sivathanu Pillai]

a portion of Neyyatinkara should be within the purview of this Committee, while as a matter of fact, the Irrigation Division at Quilon covers this portion as well. The Government may settle the doubt and confirm that these portions form part of the Irrigation Division at Quilon. With these words I am at one with the spirit underlying the motion.

MR. C. JEBAMONY NADAR: In supporting the motion I have not much to add to what had already been said by the previous speakers. Though the resolution speaks of scarcity of water for two purposes, it should not be understood that there is sufficient water for other purposes such as bathing etc, for men and cattle. I would have been happier if the motion was generally worded so as to be applicable for all localities in need. I do not wish to have a fight between Nanjinad and other parts of South Travancore, in matters such as this. I am against the introduction of Talukism here.

Myself and my friend Mr. Kesava Pillai representing the driest constituency, which has further gone dry during the course of the last 4 years on account of the failure of seasonal rains, are now constrained to raise the cry of thirst and offer our prayers for quenching the same, which is an elementary necessity of all living beings. We trust that it would be accepted in all religious sympathy, as the cry is really a pathetic one. The matter is so urgent and pressing that no time could be lost in affording us the relief. For the present I shall confine myself to the question of drinking water. Of course, we appreciate sympathy shown by the Government in the matter. But that is not sufficient and that cannot satisfy us under the present circumstances. The budget of 1113 provided for the investigation of tube wells. Similarly there has been investigation regarding tank restoration. Yet I think that no actual execution of any work has begun till now. Last year's budget provided for the improvements of some tanks. But the P. W. D. allowed those amounts to lapse without doing the budgetted works. So the demand was repeated in this year's budget as if it is a new work. I fear the same thing might happen again, for, till now no tank has been improved. I have therefore to accuse the Engineering Department of latches Again unless the works investigated are done then and there there is no use in investigation and the money spent for it is a mere waste For in the course of two or three years, circumstances may change and therefore a fresh investigation would be required. In this way we could go on investigating without executing any work. For this state of affairs I would put the blame on the Chief Engineer.

I am told that investigation reports are inordinately delayed without being approved or sanctioned. Sometimes the reports are said to be travelling to and from the Chief Engineer's office to that of his subordinates for petty matters. It may be engineering modesty but not conducive to public good.

Mr. C. Jebamony Nadar.]

Now what is the real situation in the two taluks? To show what it is I would refer to an answer to one of my questions regarding public wells. Panikulam, with an area of 2257 acres has one well. Kunnathur with an area of 2384 acres has one well. Keezhkulam having an extent of 2583 acres has no public well. That is the position with every other pakuthy in the two taluks. In the town of Eraniel it has been found on investigation that there is not a single private well containing good water Every well is brackish even if it is not dry. It has been found as a fact that the health of the people has been seriously affected by various diseases, contagious and infectious. The people here require prompt help.

Though the report of the special investigating officer has not been made available to the public, I presume that he has fixed lowlands and valleys as the proposed well sites. This has its advantages as well as disadvantages. If the site is far away from a village there would be great inconvenience if we consider the custom of females going out for drawing water. The question of tube wells or some such device must therefore take the place of sunk wells in certain localities.

I understand that in Karingal market the Government have sunk a well 130 feet deep. No water is available. The well is as the neighbour-hood. It is left like that. When the Government spend money they should avoid such difficulties and the responsibility rests with the Chief Engineer.

Apart from the wells proposed by the special officers there are yet others recommended by the sanitary department. The whole cost may come to about a lakh and a half rupees. Government must somehow or other find the money. As it is a case of drinking water it must have priority over every other expenditure. So my submission is that the Government must forthwith dig all the wells so far recommended by the special officer and Sanitary Department. Apart from allotting the amount the Government must also issue strict instructions to the Chief Engineer to carry out the works at once. I make this appeal on behalf of people who are already starving due to failure of crops for four consecutive years, apart from the keen economic depression to which they have been subjected. Honourable members would realise our water difficulty if I mention one circumstance. That is this. During Mandacadu festival which comes of during every Kumbhom the place has to look upon Pachipara reservoir 40 miles away. With these words I commend the motion to the unanimous acceptance of this Honourable House.

MR. D. FRANCIS (*Kalkulam* cum *Vilavankod*): Sir, இந்தப் பிரமேயத்தை நான் அநுகூலிக்கிறன். ராஜ்யத்தில் எந்தக் காரியத்தையும் சாதித்துக் கொள்ளலாம். ஆனால் குடிஜலம் இல்லாமல் இருக்கவே முடியாது. இந்தத் தண்ணீர் கஷ்டம் தென் திருவிதாங்கூரில் ரொம்ப காலமாகயிருக்கிறது. நாகர்கோயில் பட்டணத்தை எடுத்துக்கொண்டால்—அங்கேயும் சில கிராமங்களிலுள்ள கிணறுகளில் தண்ணீர் இல்லாமல், ஜனங்கள் அடுத்த கிராமத்திலுள்ள கிணறுகளுக்குச் சென்று

தண்ணீர் கொண்டு வருகிறார்கள். சில சுற்று கிராமங்களில் குடிஜலமில்லாமல், அரைமைல் ஒருமைல் தூரம் நடந்து, சமையலுக்கும், குடிக்கவும், குளிக்கவும் ஜலம் கொண்டுவரப்படுகிறது. கன்றுகாலிகளுக்குக் கூட வைக்கோல் போட்டு தண்ணீர்கொடுக்க ஜலம் இல்லை. அதனால் அனேகம் ஆடுமாடுகள் செத்துப்போய்விட்டன. நான் ஓணவிடை என்றஒன்று இரண்டு கிராமங்களுக்குச் சென்றிருந்தேன். ஒரு ஆடோ, மாடோ என் கண்களில் தென்படவில்லை. விசாரித்ததில், ஜலமில்லாமல் கால்நடைகள் சாவதைவிட விற்பது நல்லது என்று விற்று விட்டோம் என்று சொன்னார்கள். இப்படிப்பட்ட கஷ்டங்களை ஏழை ஜனங்கள் அனுபவித்து வருகிறார்கள். வயல்களுக்குத் தண்ணீர்பாய்ச்சல் அனேகம் குளங்கள் இருந்தன. அவைகளையும் சவர்மெண்டார் விற்று விட்டார்கள். முட்டம்கால் வெட்டும்படியாக ஒரு ஸ்கீம் தயாராக்கப்பட்டு, அதற்கு எஸ்டிமேட்டும் தயாராயிற்று. அதைப்பற்றி இதுவரை ஒருநடவடிக்கையும் எடுக்கப்படவில்லை. இதுபோல் முட்டம் ஊருக்கு தண்ணீர்சப்ளை செய்ய குழாய்க்கிணறு ஸ்கீம் ஒன்று தயாராக்கப்பட்டது. அதுவும் என்னவாயிற்று என்று தெரியாது. உத்தேசம் 20 வருஷங்களுக்கு முன் எஸ்டிமேட்டு தயாராக்கின முட்டம் கால் ஏன்வெட்டப்படவில்லை என்று தெரியவில்லை. எவ்வளவோ ஆவசியம் என்று கருதப்பட்ட பட்டணம் கால் இன்னம் வெட்டப்படவில்லை. சில வருஷங்களுக்கு முன் தண்ணீர இல்லாமலிருந்து மிகவும் ஆவசியமான 30 கிணறுகளை தணிக்கும் படியாக கவர்மெண்டுக்கு எழுதியிருந்தேன். அப்போதிருந்து Water Works Engineer. மி. பாலகிருஷ்ணராவு அவர்களுக்கு அந்தக் கிணறுகளை தணிக்கும்படி கவர்மெண்டார் உத்தரவு கொடுத்தார்கள். அவர் ஒரு ஸ்பெஷல் ஆபிஸரை ஸூப்பர்வைசராக நியமித்து அன்வேஷணமும் நடந்தது. பின்பு என்னநடந்தது என்பது இதுவரையும் தெரியவில்லை. முட்டம் முதலான இடங்களில் ஜனங்கள் குளிக்கிற வழக்கம் கிடையாது. இதனால் தொத்து வியாதிகள் வரும் போது முதலாவது அந்த ஊர்களை சந்தித்து, நூற்றுக்கணக்கான ஜனங்களை கொன்று விடுகின்றன, இப்போது சொன்ன சங்கதிகளெல்லாம் சரிப்படுத்துவதற்கு பெருந்தொகையான பணம் ஆவசியந்தான். அதனால் என்ன செய்கிறது ஜனங்கள் ஜலக்கஷ்டத்தினால் வியாதிபிடித்து இறக்கிறார்கள். இதைப்பார்த்தாவது பெருந்துகை செலவு செய்து ஜனங்களை ரக்ஷிக்கவேண்டியது சர்க்கார் கடமை, அதனால் குடிஜலத்துக்கு வேண்டிய சௌகரியங்களை எல்லாம் செய்து கொடுக்கக் கேட்டுக் கொண்டு இந்தப்பிரமேயத்தை பலமாய் அனுகூலிக்கிறேன்,

MR. M. KESAVA PANIKAR : Sir, I have great pleasure in supporting this motion. Scarcity of water is keenly felt in the taluk of Neyyattinkara. Nellikakuzhi, Kanjiramculam Parasalai, Nellimudu, Kidarakuzhi and the surrounding places can be sited as examples. There is no sufficient water in Neyyar river. Hence there is failure of crops in most parts of the Taluk. True it is that the Government have been pleased to make a reduction of tax to the extent of 5 lakhs of rupees this year. But this is not sufficient for the purpose.

As regards the Irrigation committee, I am constrained to observe that its work is not satisfactory. I would wish to draw the attention of the Government to see the grievance redressed as early as possible.

MR. G. B. E. TRUSCOTT : Sir, the Government have every sympathy with the ryots in the difficulties they have been experiencing in the matter of water supply for irrigation and domestic purposes in South Travancore, and have shown their interests in a practical manner. I might say that it has been stated that the Kodayar reservoir has not spilled for many years past. This is incorrect as to my own knowledge. It has spilled at least twice in the last few years; but it is a fact that lately owing to the scarcity of rain, Kodayar water has been correspondingly scarce and to-day there is only now about 3 ft. of water over the sill. With regard to the practical interest of Government I have referred to, I would say that about 15 months ago the Government sanctioned a special staff for the investigation of the construction of small storage reservoirs to supplement the Kodayar flow and a large number of tank restoration works have been investigated and a number have been taken up and improved. We have altogether investigated up to date about 126 tanks and estimates for the improvements of 48 have been sanctioned by Government and the estimates for 20 more are under scrutiny in the Chief Engineer's Office and a further 40 estimates are under preparation in the Division Office. There are also further tanks on which investigations have been completed. We have had allotted to us Rs. 25,000 for the investigation and repairs of tanks for this year but altogether I have estimates which will run into about one and a half lakhs of rupees and I propose asking Government for further funds for continuing the restoration of tanks.

MR. T. C. KESAVA PILLAI : May I know whether this twenty five thousand include Vilavankod also?

MR. G. B. E. TRUSCOTT : I cannot say whether these are situated in Vilavankod as I have treated the whole as one scheme. Referring to Mr. Kesava Pillai's remarks regarding the Kodayar papers and Mr. Horsley's schemes I have spent a considerable amount of time in reading the Kodayar papers and also in scutinising the schemes suggested by Mr. Horsley. Some of these schemes have proved on close investigation uneconomical both in cost and quantity of water; but others have still to be investigated. In the meantime we are doing as much as we can towards restoring the tanks. There has been a suggestion of continuing the Left Bank Channel. I do not think we should extend this channel until we have a reservoir or reservoirs to augment Kodayar. At present we are confining ourselves for restoration of tanks.

MR. KOTTALIL P. ABRAHAM : May I know the result of the investigation of the tanks ?

MR. G. B. E. TRUSCOTT : The estimates are being prepared and submitted to Government and work is carried out as soon as possible

after sanction and funds have been allotted; but we have only a few months in the year when we can do work on the tanks as during the remainder of the year the tanks contain water.

MR. KOTTALIL P. ABRAHAM: What was the nature of the recommendation in regard to the tanks? Whether to repair them or.........

MR. G. B. E. TRUSCOTT: All tanks which are not entirely silted up and could be restored to give useful supply of water are as far as possible being investigated.

Mr. Kesava Pillai spoke of the Perinjani reservoir. This reservoir, I believe, would be a very useful auxiliary supply to Kodayar if investigations prove that it is economically sound. Investigations were, I know, made at one time and an amount of Rs. 30,000 was expended on doing so; but the result I cannot trace out in the Kodayar papers nor can I find any signs of investigations at the site and perhaps Mr. Kesava Pillai may be able to assist me in that direction. It has been said that the disaforestation of the Kodayar catchment has interfered with the rainfall. This is an exploded theory. Cutting of trees have no actual bearing on the rainfall' but it has considerable bearing on the run of and conservation of rain and also of course protection against erosion.

Regarding the supply of drinking water. This has been engaging the serious consideration of Government for some years past and the Water Works Engineer carried out some trial boring investigation and has sent up recommendations to Government for some new wells. The cost of these schemes will be about Rs. 1,40,000. This, of course, will take some time to work out.

Mr. Narayanaperumal Nadar said nothing has been done as regards Muttam. This is incorrect. Borings have been made in wells in Muttam but I am afraid, that this has proved a failure.

MR. K. NARAYANAPERUMAL NADAR: May I inform the member that water in all the wells there is brackish?

MR. G. B. E. TRUSCOTT: Not all the wells. I have tasted water there which was certainly not brackish.

MR. K. NARAYANAPERUMAL NADAR: I challenge the statement.

MR. G. B. E. TRUSCOTT: It is a matter of personal experience. The next suggestion was to extend the Muttam branch irrigation channel from its tail end up to Muttam tank and an investigation was conducted by the Chief Engineer at the time and he suggested a scheme for carrying water by pipes and also suggested that a well could be located not far south of Muttam. Both these schemes were found on investigation to be prohibitive in cost. There was another suggestion regarding the feasibility of diverting the Anadanar Odai. This scheme on detailed investigation was found impracticable.

MR. K. NARAYANAPERUMAL NADAR: May I know why?

MR. G. B. E. TRUSCOTT: There is more than one reason. The length of the proposed channel from the regulator to the tank in the Muttam village is 3½ miles and not 1½ as stated by the honourable member. During the irrigation season the Odai carries water, but in the dry season the Odai dries up.

MR. K. NARAYANAPERUMAL NADAR: May I know whether this difficulty cannot be removed by linking the two sides of the river with burnt bricks?

MR. G. B. E. TRUSCOTT: I am afraid the honourable member did not realise my point which was that the Odai which received this water from the channels on either side dries up in the hot weather. There is also a proposal for constructing an underground infiltration gallery and collecting well and carrying water from this gallery to a high level balancing cistern. This scheme and also another scheme for deep well boring in some of the villages higher up at Muttam which has been suggested by the Engineers who sunk the wells for us at Alleppey, Thottapally and 2 other places along the coast appear at present feasible. This latter scheme is under scrutiny by the Division Officer and I propose to personally investigate both these schemes at the first opportunity and submit concrete proposals to Government. I feel sure that the hon'ble Member who moved the adjournment motion will agree that the Government are fully alive to the needs of water supply in South Travancore and that he will see that there is no necessity for pressing this motion to a division. In the meantime I may say, that the P. W. D. is carrying water by lorry from Friday Market to Muttam doing several trips daily and that this will be continued until the wells again supply water.

DR. M. K. GOPALA PILLAI: Sir, I fully appreciate the sentiment with which the honourable member, the mover of the adjournment motion, has spoken about the scarcity of water in South Travancore. It is true that for the last four years there has been some scarcity of water, particularly in Kalkulam and Vilavankod. The average rainfall at the end of 1108 was 68 inches whereas at the end of 1113 it was only 55 inches. In Vilavankod and Kalkulam taluks till the end of 1108 the rainfall was 73 inches and till the end of last year it was only 64 inches. This is a reading of the meteorological conditions. In spite of these difficulties, the Public Health Department has been trying its best to ensure the supply of good drinking water to the inhabitants of South Travancore. There are about 78 wells maintained by the Department in Kalkulam and 23 wells in Vilavankod taluk. On hearing about the scarcity of water, immediate orders were issued to the subordinates of the Department to keep the wells in proper condition and facilitate the supply of water, deepen the wells and also to take up as many wells for immediate construction as funds are available. It has to be remembered, Sir, that not only Travancore is suffering from scarcity of water. For the last two years there has been universal shortage of water throughout the Presidency. The supply is now facing a fall in the Madras City.

Reports were also received from several places of North and Central Travancore regarding shortage of water from places where there were no complaints in this respect before.

MR. K. P. KOCHUKORA THARAKAN: വടക്കൻതിരുവിതാംകൂറിൽ എവിടെയെല്ലാമാണ് ജലദൌർലഭ്യമുള്ളത്?

DR. M. K. GOPALA PILLAI : പെരുമ്പാവൂർ, മൂവാററുപുഴ, കോട്ടയം, തിരുവല്ലായിലെ കിഴക്കുഭാഗത്തുള്ള പകുതികൾ, ചെങ്ങന്നൂർ, ചേർത്തല, കൊട്ടാരക്കര, കരുനാഗപ്പള്ളി മുതലായ സ്ഥലങ്ങളാണ്.

MR. K. P. KOCHUKORA THARAKAN : മുനമ്പം, വടക്കൻപറവൂർ മുതലായ സ്ഥലങ്ങളും ശുദ്ധജലം കിട്ടാത്ത സ്ഥലങ്ങളല്ലേ?

DR. M. K. GOPALA PILLAI : അതേ.

MR. K. P. KOCHUKORATHARAKAV: മുനമ്പം പറവൂർ മുതലായ സ്ഥലങ്ങളിലെ ജലദൌർലഭ്യത്തിനും തെക്കൻതിരുവിതാംകൂറിലെ ജലദൌർലഭ്യത്തിനും തമ്മിൽ വല്ല വ്യത്യാസവുമുണ്ടോ?

DR. M. K. COPALA PILLAI : തെക്കൻതിരുവിതാംകൂറിലെ വെള്ളം ഉപ്പുവെള്ളമായിരിക്കും.

MR. K. P, KOCHUKORATHARAKAN: പറവൂർ, വടക്കേക്കര മുതലായ സ്ഥലങ്ങളിൽ ഉപ്പുവെള്ളമല്ലേ ഉള്ളൂ?

DR. M. K. GOPALA PILLAI : അതെ.

MR. K. P. KOCHUKORA THARAKAN : ഉപ്പുവെള്ളംപോലുമില്ലാത്ത സ്ഥലങ്ങൾ പറവൂർ താലൂക്കിലില്ലേ?

PRESIDENT : Order, Order. Now Mr. Gopala Pillai may or may not yield his place.

DR. M K. GOPALA PILLAI: Sir, the Public Health Department in consultation with the Government is doing everything possible to mitigate the conditions in the places where there is scarcity of water especially in South Travancore. They have already taken measures in this direction and if it is not sufficient, additional wells will be sunk in such places where the scarcity is more keenly felt and thus steps will be taken to ensure the supply of good drinking water.

MR. T. C. KESAVA PILLAI: May I know whether Government would do anything immediately to relieve the suffering of the people of Vilavankod and Kalkulam where water scarcity is prevalent everywhere?

DR. M. K. GOPALA PILLAI : In all places from where complaints were received, immediate measures were taken to supply water to the public. For instance, in Muttom, water is being distributed by lorries four or five times in a day. I hope the Honourable Member would withdraw the adjournment motion in the face of the fact that all that is possible is being done to alleviate the distress of the people, due to scarcity of water.

MR. M. RAMACHANDRA RAO : Sir, I have not much to add to what the Chief Engineer and the Director of Public Health have stated. But there are two points referred to by the Honourable member Mr. Kesava

Pillai which require elucidation. One is supply of water for Irrigational purposes and the other is the remission of tax on Tharisu lands. As far as Irrigation Rules are concerned I may inform the House that Irrigation works are divided into two kinds, Major Irrigation works *i. e.*, works which will benefit more than 200 acres of land and Minor irrigation works, which will benefit less than 200 acres. For Major Irrigation works the ryots benefitted have to pay a cess on land for the supply of water. For Minor Irrigation works, half the cost of work should be borne by the ryots whose lands are benefitted by the work. The honourable member said that they will pay 25% but rules require 50%.

Regarding the remission of Tharisu lands I had already submitted that I had called for lists of Tharisu lands from the Division Peishkars and as soon as they are received I shall take up the question with Government and see whether anything possible can be done. I may also say that I intend to go round the pakuthies in the constituency of of Mr. Kesava Pillai and see for myself the conditions there. I am sure that Mr. Kesava Pillai will help me in this. With these words I request the honourable member to withdraw his adjournment motion.

MR. T. C. KESAVA PILLAI: Sir, honourable members from either side of the house have placed before this Assembly vivid pictures of the conditions prevalent in South Travancore. The Chief Engineer's reply was not very clear, not through any fault of his but due to the echo prevailing here in this Hall. What I request is to give me a kind hearing. Very many representations were sent to Government and they were forwarded to the Irrigation Division Officer. That Officer is not competent to handle this. The previous Division Officer of Nagercoil tried to raise the Chittar water to a higher level to take water to the Kothayar Reservoir. The plot chosen by him was 2 miles away from the reservoir and this is a technical blunder. The catchment area of the reservoir instead of being 9 sq. miles it is only half a sq. mile. If the Wannan Para Dam or a site chosen in Chittar No. 1 near Charanaloor was selected it would have been a great advantage to the ryots as well as to Government.

As regards the kind words given by the Land Revenue Commissioner assuring me that something tangible will be done in alleviating the distress of my constituency, I can only thank him and hope that he will be trying his best to take some immediate measures in that direction.

The reply from the Public Health Director was quite unsatisfactory and the Department should be ashamed to tell the House that because there is water being supplied to the people by lorries at Muttom no other permanent measures need be adopted. Health Department should be alive to the needs of the suffering human beings particularly with regard to the supply of good drinking water. But I know Sir, that they were doing great services in that area during the prevalence of epidemics. And now also it is their duty to tell Government

[Mr. T. C. Kesava Pillai.]

plainly that all possible steps should be taken to save the dying humanity in the Southern Travancore. And if Government are not going to respond, Sir, things may come to such a crisis that disaffection among the people may be a general rule. Sir, I have nothing to fear to place the facts in this Assembly as they are. I hope that temporary arrangements will be made for the immediate supply of water for those parts which are keenly affected especially in Vilavankod and Kalkulam taluks.

From one corner of this Chamber I was surprised to hear that there are disloyal people in other taluks except Nanjinad. But History tells us——

MR. M. SIVATHANU PILLAI: Sir, I only said that we are not players in a game of bluff, but we only deal in truth.

MR. T. C. KESAVA PILLAI: And I submit that if my cry is unheeded by Government I will have no other alterative to resign my seat and try to serve my constituency in some other capacity. I hope that Government would order the construction of a channel from Triparappu to irrigate the old lands in the pakuthies up to Kollamcode and water of Neyyur also could supplement this by such similar diversion at Aruvipuram or Aruvikara. I also request that T. C. ode extension could be made to irrigate Nattalam Killiyoor and Keezkulam pakuthies by extending the channel at Kaviyallur. But with these words Sir, I withdraw the motion expecting a favourable response from the Government.

PRESIDENT: The House will now adjourn to meet again at 11'o clock on Monday.

The House adjourned at 4-28 P. M.

A. GUNAMONY,

Secretary to the Sri Mulam Assembly.

PROCEEDINGS
of
THE TRAVANCORE SRI MULAM ASSEMBLY.

(OFFICIAL REPORT)

SECOND ASSEMBLY.

FOURTH SESSION.

Monday, the 13th February 1939/1st Kumbhom 1114.

The Assembly met again in the Legislative Chamber, Public Offices, at Eleven of the clock, with the President in the Chair.

MEMBERS SWORN.

The following members took the oath and signed the Rolls :—

1. Khan Bahadur G. S. Abdul Karim Sahib (*Commissioner of Police*),
2. Mr. A. Gopala Menon (*Director of Public Instruction*),
3. Mr. M. P. Joseph (*Acting Excise Commissioner*), and
4. Dr. G. D. Nokes (*Public Service Commissioner*).

QUESTIONS AND ANSWERS.

Embankment and bridge at Vallam.

29. *MR. K. P. KOCHUKORA THARAKAN (*Kunnatnad* cum *Parur*): Will the Government be pleased to state:

(*a*) whether there is an embankment and a bridge at the place called Vallam on the 144th mile of the M. C. road ;

(*b*) how many times each year the above bridge and embankment are under water and the number of days each time during which traffic is made inconvenient ;

(*c*) whether *junghars* are being provided there by Government when the place is under water :

(*d*) whether an estimate for raising the above embankment and reconstructing the bridge, has been prepared and sent to the Chief Engineer from the Alwaye Division ; and

(*e*) if so, the stage at which the matter is at present ?

MR. G. B. E. TRUSCOTT (*Chief Engineer*): (*a*) No; but there is an embankment and bridge in 145th mile of the M. C. road.

(*b*) This depends upon the floods of each year.

(*c*) No, but ferry boats are engaged.

(*d*) & (*e*) No estimate has been prepared, but a preliminary investigation has been made and the work will be provided for and taken up when funds become available.

MR. K. P. KOCHUKORA THARAKAN: റോഡിൽ വെള്ളം പൊങ്ങിക്കിടക്കുമ്പോൾ വാഹനങ്ങൾക്ക് ഗതാഗതസൌകര്യം ഉണ്ടാകുന്നതെങ്ങിനെ?

MR. G. B. E. TRUSCOTT: There are ferries but we have no *junghar* for the passage of vehicles.

Issue strength of arrack.

31. ***MR. K. NARAYANAPERUMAL NADAR** (*Tovala* cum *Agastisvaram*): Will the Government be pleased to state:

(*a*) whether the issue strength of arrack was raised from 30 U. P. to 25 U. P. in recent years; and

(*b*) if the answer to part (*a*) is in the affirmative, the reasons for so doing?

MR. M. P. JOSEPH (*Ag. Excise Commissioner*): (*a*) Yes.

(*b*) To prevent the prevalence of illicit distillation.

MR. K. NARAYANAPERUMAL NADAR: May I know whether the issue strength of arrack was raised in all the taluks or only in some taluks?

MR. M. P. JOSEPH: Not in all taluks; it was raised in all taluks, excepting those bordering the Cochin State and in Shencotta.

MR. K. NARAYANAPERUMAL NADAR: May I know the reason for raising it only in some taluks?

MR. M. P. JOSEPH: I did not hear the question.

MR. K. NARAYANAPERUMAL NADAR. May I know the reason for that?

MR. M. P. JOSEPH: In Cochin the issue strength is 35 U. P. For the taluks bordering Cochin, we have the old issue strength of 35 U. P., as a matter of inter statal courtesy.

MR. K. NARAYANAPERUMAL NADAR: May I know whether the higher strength tended to the increase or decrease in the consumption of arrack in those taluks?

MR. M. P. JOSEPH: It tended to the increase of consumption.

MR. K NARAYANAPERUMAL NADAR: May I know by how many gallons?

MR. M. P. JOSEPH: About 9,000 gallons.

MR. K. NARAYANAPERUMAL NADAR: May I know whether the change was made by Government on their own initiative or on the application of the drunkards?

MR. M. P. JOSEPH: It was not on the application of the drinking population but was on the specific recommendation of the Excise Commissioner.

MR. K. NARAYANAPERUMAL NADAR: May I know whether it was done with the idea of popularising drink in the State or to minimise it?

MR. M. P. JOSEPH. It was done with the idea of dealing with illicit distillation.

Appointments in the Public Health Department.

31. ***MR. D. FRANCIS** (*Kalkulam* cum *Vilavankod*): Will the Government be pleased to lay on the table a statement by caste showing the appointments made by the Director of Public Health from 1-1-1110 to 1-1-1114 with names, pay and date of appointments?

MR. M. K. GOPALA PILLAI (*Director of Public Health*): A statement furnishing the required information is laid on the table.

Improvements to the Puliyoor-Mannar Road.

32. ***MR. PULIYOOR T. P. VELAYUDHAN PILLAI** (*Tiruvalla*): Will the Government be pleased to state:

(*a*) whether they have decided the question of improving the Puliyoor-Mannar road;

(*b*) whether they have considered the above question and the question of sanctioning a *junghar* service at the place called Idinayarkadavu (ഇടിനായർകടവു) on the above road; and

(*c*) the steps hitherto taken by the Government or the Department for improving the above road and sanctioning the *junghar* service?

MR. G. B. E. TRUSCOTT: (*a*) Yes.

(*b*) Yes.

(*c*) Estimate has been prepared, but it is pending sanction for want of funds.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: With reference to answer to part (c), may I know the amount required for opening the *junghar* service?

MR. G. B. E. TRUSCOTT: About Rs. 7,000.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: My question is with reference to the opening of the *junghar* service.

MR. G. B. E. TRUSCOTT: I have not the separate items of estimate available with me here.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government whether the estimate for the purpose has been submitted to Government?

MR. G. B. E. TRUSCOTT: We do not submit estimate unless there is provision of funds for the same.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know whether they have considered the financial aspect of the question for the opening of the *junghar* service before they prepared the estimate?

MR. G. B. E. TRUSCOTT: I do not think we have considered a separate provision for a *junghar* as yet.

**Vide* Appendix I. page—

Statement of appointments made in the Anchal Department.

33. ***MR. D. FRANCIS**: Will the Government be pleased to lay on the table, a statement by caste, showing the appointments made in the Anchal Department from 1-1-1110 to 1-1-1114 with names, pay and date of appointment?

MR. M. K. NILAKANTA AIYAR (*Ag. Chief Secretary to Government*): The *statement is laid on the table.

MR. P. NARAYANA PILLAI (*Mavelikara* cum *Kunnatur*): May I know whether any particular communities are excluded from appointment in the Anchal Department?

MR. M. K. NILAKANTA AIYAR: No, Sir.

MR. P. NARAYANA PILLAI: May I know whether a notification was issued on 11-6-1114 inviting applications for appointments in the Anchal Department?

MR. M. K. NILAKANTA AIYAR: I am not aware of it.

Candidates for appointments in Public Service.

34. ***MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state:

(*a*) whether the 1st list of selected candidates for appointments as clerks on Rs. 20-25 is exhausted;

(*b*) if not, how many more still remain to be appointed;

(*c*) how many of the relieved candidates of the said list have applied for re-registration;

(*d*) when will the re-appointment of those re-registered candidates be begun;

(*e*) when will the 2nd list of the selected candidates for appointments as clerks on Rs. 20-25 come to force; and

(*f*) the reason for such a long delay for the appointment of the candidates of the second list referred to?

DR. G. D. NOKES (*Public Service Commissioner*): (*a*) No.

(*b*) 103.

(*c*) 147.

(*d*) In the normal course of events, after all the selected candidates who have not yet been recruited have been advised once for recruitment.

(*e*) In the normal course of events, after the first list has been exhausted.

(*f*) The need for exhausting the first list first.

Nangiyarkulangara Toll.

35. ***MR. P. NARAYANA PILLAI**: Will the Government be pleased to state:

(*a*) the names of the toll-gates subsidiary to the Nangiyarkulangara toll; and

(*b*) whether the Chief Engineer has received complaints about the malpractices done at any of such toll-gates?

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*Vide Appendix II. page—

MR. G. B. E. TRUSCOTT: (*a*) The attention of the member is invited to the notification published at pages 360 to 385 of the P. W. D. sheet of the Gazette dated, 5-7-1938/21-11-1113.

(*b*) Yes.

Special permit to Service Bus T. V. R. No. 4556.

36. ***MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state:

(*a*) whether in January 1938 special permit was given to the Service Bus T. V. R. No. 4556 to run to Sabarimala Temple which is in North Travancore; and

(*b*) if the answer to part (*a*) is in the affirmative, the reasons for granting the special permit when there is no other service bus on the line?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB (*Commissioner of Police*): (*a*) No.

(*b*) This does not arise in view of the answer to part (*a*).

Arrest of Dr. N. S. Pillai.

37. ***MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state:

(*a*) whether one Doctor N. S. Pillai was arrested at Attingal for leading a congress procession;

(*b*) whether subsequently he was taken to any Police Station; and

(*c*) whether he was taken to the General Hospital by the Police authorities?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: (*a*) He was arrested for offences under Section 4, parts 1 and 2 of Act I of 1114.

(*b*) Yes.

(*c*) Yes.

MR. K. NARAYANAPERUMAL NADAR: May I know the date of his arrest?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: 5-2-1114.

MR. K. NARAYANAPERUMAL NADAR: May I know why he was taken to the General Hospital?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: He complained that he was suffering from bodily pain.

MR. K. NARAYANAPERUMAL NADAR: May I know whether he was tried by the District Magistrate in camera?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I am not aware.

MR. K. NARAYANAPERUMAL NADAR: May I know the date of his taking to the General Hospital?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I claim notice.

MR. K. NARAYANAPERUMAL NADAR: No notice is required. My original question was whether he was taken to the General Hospital by the Police authorities and my supplementary question is when he was taken there.

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I am sorry, I cannot give that information accurately; it was perhaps 6-2-1114.

MR. K. NARAYANAPERUMAL NADAR: Sir, that is a natural supplementary question.

PRESIDENT: Not equally natural or expected by the Inspector General of Police.

MR. K. NARAYANAPERUMAL NADAR: May I know whether his ribs were broken?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: The certificate of the doctor who examined him does not say so.

MR. K. R. NARAYANAN (*Vaikom cum Kottayam*): ഡാക്ടർ എൻ. എസ്. പിള്ളയെ ദേഹോപദ്രവം ഏൽപ്പിച്ചതായി പോലീസിലേക്ക വല്ല പരാതിയും കിട്ടിയിട്ടുണ്ടോ?

MR. K. NARAYANAPERUMAL NADAR: Sir, I rise to a point of order. The Financial Secretary and the Police Commissioner are talking.

PRESIDENT: If the Inspector-General of Police does not understand the language, it has to be interpreted by somebody else. If honourable members will put questions in the language which is known to the Inspector-General of Police, which I think can be done especially by Mr. Nadar and Mr. Narayanan, I think the difficulty can be avoided. This is a matter on which the Chair could not dictate any terms.

MR. K. R. NARAYANAN: ഡാക്ടർ എൻ. എസ്. പിള്ളയെ ദേഹോപദ്രവം ഏൽപ്പിച്ചതായി വല്ല പരാതിയും കിട്ടിയിട്ടുണ്ടോ?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Yes Sir. A complaint was made to the Police.

MR. K. R. NARAYANAN: അതിനെപ്പററി വല്ല അന്വേഷണവും നടത്തിയിട്ടുണ്ടോ?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Certainly, Sir.

MR. K. R. NARAYANAN: അദ്ദേഹത്തെ അറസ്റ്റ്ചെയ്യാൻ കാരണം എന്താണ്?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: It was done because he was member of an unlawful assembly.

MR. N. NARAYANA KURUP (*Ambalapuzha cum Shertala*): May I know whether any written statement was given to the Police by Dr. N. S. Pillai?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: He did not give any statement with regard to the injuries but only with regard to special food, good bed, and all that.

Hindu Nadars in Government service.

38. ***MR. C. JEBAMONY NADAR** (*Kalkulam cum Vilavankod*): Will the Government be pleased to state:

(*a*) whether there is any Hindu Nadar Officer, in any of the Departments of the State, receiving a monthly salary of Rs. 100 and above; and

(*b*) if so, the total number of such officers?

MR. M. K. NILAKANTA AIYAR: (a) None.

(b) This does not arise

Vernacular iddle School, Kattathurai.

39. ***MR. C. JEBAMONY NADAR**: Will the Government be pleased to state:

(a) the total number of pupils in the Government V. M. School Kattathurai, Attoor pakuthy, Kalkulam taluk;

(b) the total number of pupils whose mother-tongue is Tamil;

(c) whether Tamil is the medium of instruction in any of the classes; and

(d) whether the public of that locality are petitioning the authorities from the year 1100 to introduce Tamil as the medium of instruction in that school?

MR. A. GOPALA MENON (*Director of Public Instruction*): (a) 357.

(b) 203.

(c) No.

(d) Yes; it was ordered that the question of opening Tamil classes in the school would be considered if and when the people provide at their cost the necessary additional accommodation for the school. The public have not put up any additional building yet.

MR. C. JEBAMONY NADAR: With reference to answer to part (d), may I know whether the order of the Government was communicated to the public?

MR. A. GOPALA MENON: People concerned have been informed.

MR. C. JEBAMONY NADAR: May I know how they were informed?

MR. A. GOPALA MENON: Through the officers on the spot.

MR. C. JEBAMONY NADAR: May I know the date on which they were informed?

MR. A. GOPALA MENON: I am sorry, I have not got that information with me now.

PRESIDENT: I think official members must have the necessary papers with them.

MR. C. JEBAMONY NADAR: May I know whether there are any special reasons why in a school where there are 203 Tamil students out of a total of 357, Tamil is not introduced as the medium of instruction?

MR. A. GOPALA MENON: There was no serious protest. The school was begun as a Malayalam school and people were willing to educate their children with Malayalam as the medium.

MR. T. C. KESAVA PILLAI (*Kalkulam cum Vilavankod*): May I know whether there is any petition for granting permission to hold a Malayalam school adjoining the very same school for the convenience of Malayalam speaking people?

MR. A. GOPALA MENON: I am not aware of it.

Head Pandit in the Curator's Office.

40. ***MR. PULIYOOR T. P. VELAYUDHAN PILLAI**: Will the Government be pleased to state:

(a) whether in filling up the vacancy of the Head Pandit in the Curator's Office the claims of any permanent hand there, have been superseded or overlooked and, if so, the reasons for the same; and

(b) the qualifications for the post and those possessed by both persons concerned?

MR. M. K. NILAKANTA AIYAR: (a) The vacancy of the Head Pandit in the Curator's office has not been filled up.

(b) The question does not arise in the light of the answer to part (a).

Power House at Pallivasal.

41. *MR. K. P. KOCHUKORA THARAKAN: Will the Government be pleased to furnish particulars on the following points in regard to fixing of a site for the Power House at Pallivasal:

(a) whether Mr. Truscott was specially deputed, before he was appointed here as the Chief Engineer, to examine the site of the Power House;

(b) if so, the expenditure incurred therefor;

(c) whether the site of the Power House which had to be dismantled or the one where the Power House is being newly constructed was recommended in his report;

(d) whether any one, now in the department, had opined that the site of the new Power House was the suitable one;

(e) if so, the name of that person:

(f) whether a Civil Engineer had been appointed to supervise the construction of the Power House that has become unsound;

(g) if so, his name and his present employment; and

(h) the place where he is now employed?

MR. G. B. E. TRUSCOTT: (a) No, but he was called in to examine the scheme in general.

(b) Rs. 1,200.

(c) He has not recommended any site in the report. He has observed that the original site appeared favourable. The new site has not been mentioned in the report. No Power House has been dismantled.

(d) Yes.

(e) Mr. G. B. E. Truscott.

(f) Yes.

(g) Mr. E. Sivaraman Nair Assistant Engineer (P. W. D.)

(h) Kottayam.

Keezhillam-Kurichilacod road.

42. *MR. K. P. KOCHUKORA THARAKAN: Will the Government be pleased to state:

(a) the distance of the first section (Perumbavoor Section) of the Keezhillam-Kurichilacode road;

(b) whether any work was done on the above mentioned first section during the last two years, and if so, the cost of the work done;

(*c*) what further sum will be required to make that first section cartable;

(*d*) whether recommendation was made in any year from the Alwaye Division Office to the Chief Office for inclusion in the budget, the work of improving the above mentioned first section so as to make it cartable, and if so, during which years; and

(*e*) if it was so recommended from the Alwaye Division Office whether it was included in the budget, if not, the reason for not doing so?

MR. G B. E. TRUSCOTT: (*a*) 1 mile and 4940 feet.

(*b*) Yes; Rs. 200 in 1111 M. E. and Rs. 295 in 1112 M. E.

(*c*) A sum of Rs. 4080 as per the estimate sanctioned for the work.

(*d*) and (*e*) The estimate for the work was sanctioned in 1112 M. E. but the work could not be commenced for want of funds.

Road from the first mile of the Kuruppumpadi-Koottikkal trace.

43. ***MR. K. P. KOCHUKORA THARAKAN:** Will the Government be pleased to state;

(*a*) (1) whether a road has been constructed by the people from the 1st mile of the Kuruppumpadi-Koottikkal trace in the Alwaye Sub-Division to the Marapatti ferry on the Periyar, (2) whether petitions have been sent to the authorities for the road being taken by Government to construct culverts &c, and (3) whether the people have agreed to surrender to Government, lands free of compensation for the purpose;

(*b*) if so, the steps taken so far by the department in the matter and the stage at which it stands at present;

(*c*) whether the Sub-Division Officer at Alwaye has inspected the road and, if so, when, and

(*d*) if he has inspected the road, the opinion recorded by him?

MR. G. B. E. TRUSCOTT: (*a*) (1) The road has been sanctioned and some earth work done:

(2) Yes.

(3) Yes, but no written statement has been given;

(*b*) The road has been inspected by the officers concerned and the people have been asked to improve the road as per Ryots Road Rules.

(*c*) Yes, on 16-6-1937.

(*d*) The road does not satisfy the Ryots Roads Rules.

MR. K. P. KOCHUKORA THARAKAN: ഈ വിവരം സ്ഥലനിവാസികളെ അറിയിച്ചിട്ടുണ്ടൊ?

MR. G. B. E. TRUSCOTT: I believe that the people have been informed by the Division Officer.

MR. K. P. KOCHUKORA THARAKAN: സ്ഥലനിവാസികളെ അറിയിച്ചിട്ടുണ്ടു് എന്നു് തീർച്ചയായി പറയാൻ സാധിക്കുമൊ?

MR. G. B. E. TRUSCOTT: I only said that I believe that people have been informed, this is the usual custom.

Vernacular Middle School for South Ariad.

44. ***MR. N. NARAYANA KURUP:** Will the Government be pleased to state:

(*a*) Whether they have received representations in 1114 M. E. from the Public of South Ariad and Ariad North Pakuthies in the Ambalapuzha Taluk, requesting to raise the South Ariad vernacular Primary School into a Vernacular Middle School;

(*b*) if the answer to part (*a*) is in the affirmative, whether any departmental enquiries or investigations have been made by the Director of Public Instruction on the representations; and

(*c*) the result of such representations and investigations?

MR. A. GOPALA MENON: (*a*) Yes.

(*b*) and (*c*) The matter is under consideration.

MR. N. NARAYANA KURUP: May I know from the honourable member the date of the first representation on this matter by the people of the locality?

MR. A. GOPALA MENON: It was before the re-opening of the schools last year.

MR. N. NARAYANA KURUP: May I know the result of the enquiries?

MR. A. GOPALA MENON: Sanction has been accorded.

Fee concession to the students belonging to Panan Community.

45. ***MR. PULIYOOR T. P. VELAYUDHAN PILLAI:** Will the Government be pleased to state:

(*a*) whether fee concession is given to the students belonging to *Panan* community;

(*b*) if the answer to part (*a*) is in the negative, the reasons for the same;

(*c*) the percentage of literacy both in Malayalam and in English among the members of this community; and

(*d*) whether they were given the fee concession before the revision of the rules relating to the fee concession?

MR. A. GOPALA MENON: (*a*) Yes.

(*b*) Does not arise in view of answer to part (*a*).

(*c*) Information is not available.

(*d*) Yes.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government whethe the fee concession is given to the students of this community studying in the English schools?

MR. A. GOPALA MENON: Yes.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government whether any representation has been submitted to the Director of Public Instruction regarding fee concession by students belonging to this community in the Hindu High School, Tiruvella?

MR. A. GOPALA MENON: Representations have been received, but I cannot locate this particular one.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know the nature of the representation?

MR. A. GOPALA MENON: I am not in a position to place my hand on the paper just now. It is a big file.

Location of the Chengannur Dispensary building.

46. ***MR. PULIYOOR T. P. VELAYUDHAN PILLAI:** Will the Government be pleased to state:

(*a*) whether they have stated in the Sri Mulam Assembly on the 11th July 1938 that a site has been fixed for the location of the Chengannur Dispensary building and that a sum of Rs. 14,000 has been ordered to be provided in the P. W. D. Budget for 1114 for the acquisition of land and construction of a building; and

(*b*) the steps taken in the matter?

MR. G. B. E. TRUSCOTT: (*a*) Yes.

(*b*) Nothing further has been done for want of funds.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government whether they have acquired any site for locating the building?

MR. G. B. E. TRUSCOTT: I do not think anything has been done. The site has been selected but I do not think it has been acquired.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government why the Chief Engineer did not make any provision for the acquisition of the land and for the construction of the building as per the order issued by the Government?

MR. G. B. E. TRUSCOTT: Provision was made but allotment could not be made.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government whether the Chief Engineer had recommended the inclusion of a provision for this purpose at the time of preparing the Budget for the last year?

MR. G. B. E. TRUSCOTT: I am afraid that communications between the Chief Engineer and Government are confidential.

Construction of an outlet at Purakkad.

47. ***MR. PULIYOOR T. P. VELAYUDHAN PILLAI:** Will the Government be pleased to state:

(*a*) with reference to the answer to question No. 238 published at page 943 of Vol. XII Assembly Proceedings, whether they have taken any steps for constructing a proper outlet at Purakkad in the Ambalapuzha taluk for diverting the flood water to the Arabian Sea; and

(*b*) the details of the works hitherto done by the P. W. D. in connection with this and the delay for the commencement of construction?

MR. G. B. E. TRUSCOTT: (*a*) Yes.

(*b*) The tenders for the construction of the timber bridge over the spillway, construction of the outlet channel and construction of groynes were called for and contract settled. A portion of the temporary staff for the execution of the work is posted. The works will be put in hand as soon as the alignment of the spillway and bridge over the same is finally settled and the required lands are acquired.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from the Government the reason for the delay for the final settlement of the alignment of the spillway and bridge as referred to in Part (*b*) of the answer?

MR. G. B. E. TRUSCOTT: The original location of the bridge has been altered by the Director of Development.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know whether any joint inspection has been made in regard to this matter?

MR. G. B. E. TRUSCOTT: No, Sir. The Director of Development has been asked to definitely mark his location of the bridge and the road will be realigned to conform to this new site.

Copyists in the Judicial Department.

48. ***MR. S. NARAYANA PILLAI** (*Quilon* cum *Kottarakara*): Will the Government be pleased to state:

(*a*) the qualification laid down for the copyists in the Judicial Department;

(*b*) the qualification for promotion of copyists as Amins; and

(*c*) the qualification laid down for employment as clerks of the lowest grade in other Departments and the highest grade to which they could be promoted?

MR. M. K. NILAKANTA AIYAR: (*a*) The minimum qualification is E. S. L. C. with 30 per cent of the Public Examination marks in English and in a Vernacular, or any equivalent qualification, with good handwriting in English and Vernacular.

(*b*) General Educational qualification for clerks to the grade of Rs. 20—25 as laid down at page 51 of the Public Service Recruitment Rules (item 50 in schedule B) and Travancore Survey Test.

(*c*) General Educational qualification as laid down in the Addenda to pages 51 and 52 of the Public Service Recruitment Manual. Candidates who possess no higher qualification can be promoted only to the grade of Rs. 75—100.

Appointments in Vernacular Schools.

49. ***MR. D. FRANCIS**: Will the Government be pleased to lay on the table a statement by caste of appointments made in the Vernacular Middle Schools and Vernacular High Schools from 1-1-1110 to 1-1-1114 with their names, pay and date of appointment.

MR. A. GOPALA MENON: The time and labour involved in collecting and furnishing the information are out of all proportion to its possible utility.

Road connection between Kottar-Dharmapuram road and Rajakamangalam beach road.

50. * MR. K. NARAYANAPERUMAL NADAR : With reference to the answer given to part (e) of the question No. 282 (155) answered on Thursday the 4th August 1938 in the Budget Session of the Sri Mulam Assembly, will the Government be pleased to state :

(a) how far the land acquisition has progressed :

(b) the further steps taken till now for the construction of the road in question ; and

(c) if the answers to parts (a) and (b) are in the negative, the reasons therefor ?

MR. G. B. E. TRUSCOTT : (a) to (c) Due to insufficient allotment for new works in the Budget for 1114 M. E. it was not possible to provide funds in 1114 M. E. The necessary steps for acquiring the lands will be taken when funds become available.

MR. K. NARAYANAPERUMAL NADAR ; May I know the approximate amount for acquiring the lands ?

MR. G. B. E. TRUSCOTT : The estimate amounts, I believe, to Rs. 6,470. That should include the necessary amount for the land. I cannot give the separate figures for the land because it is part and parcel of the original estimate which is not available with me here.

Nadar Candidates in the Intermediate Division of the Public Service.

51. * MR. K. NARAYANAPERUMAL NADAR : Will the Government be pleased to lay on the table a list of the names, designations, pay and the native places with the nearest Anchal Offices of the candidates recruited from the Nadar community in the Intermediate Division of the Public Service, during the year, 1113 M. E.

DR. G. D. NOKES : A *statement containing the designation and pay of the candidates is laid on the table. The names and addresses of the candidates are confidential and a statement of their geographical distribution would serve no public purpose.

Munsiff's Court Building at Mavelikara.

52. *MR. P. NARAYANA PILLAI : Will the Government be pleased to state :

(a) what is the rent per mensem of the building in which the Munsiff's Court at Mavelikara is housed at present ;

(b) whether the Government have entered into any agreement with the owner to hold the Court in that building for any fixed term; and

(c) whether they have considered the possibility of shifting the court to any of the Government buildings ?

MR. M. K. NILAKANTA AIYAR : (a) Rs. 35.

(b) No.

(c) Yes.

* *Vide* Appendix III.

English Middle School for Girls at Mavelikara.

53 *MR. P. NARAYANA PILLAI: Will the Government be pleased to state:

(a) what the strength of the English Middle School for Girls at Mavelikara is at present; and

(b) whether they have considered the question of amalgamating this school with the Government English High School at Mavelikara?

MR. A. GOPALA MENON:

(a) 80 as at the end of 1113.

(b) The question is under consideration.

Thennalloor-Athukattukulangara road.

54. *MR. P. NARAYANA PILLAI: Will the Government be pleased to state:

(a) how long it is since work was begun for the construction of the Thennalloor-Athukattukulangara road (beginning from the 65th mile stone of the M. C. road and joining at the 11th mile stone of the Kayamkulam-Adoor road);

(b) whether any work is done this year for the completion of the road; and

(c) if not why?

MR. G. B. E. TRUSCOTT:

(a) The construction of the road was begun in the year 1111 and the culverts were completed in the same year.

(b) No.

(c) For want of funds.

Working hours of the Arrack and Toddy Shops.

55. * MR. K. NARAYANAPERUMAL NADAR: Will the Government be pleased to state whether from 1936 onwards, the working hours of the arrack and toddy shops are extended from 8 P. M. to 9 P. M.?

MR. M. P. JOSEPH: Yes.

MR. K. NARAYANAPERUMAL NADAR: May I know from Government whether the change in the working hours has increased the number of drunkards or minimised it?

MR. M. P. JOSEPH: I cannot give the information called for by the honourable member.

MR. K. NARAYANAPERUMAL NADAR: Did the Government make the change on their own initiative or on the recommendation from somebody else?

MR. M. P. JOSEPH: It was on the specific recommendation of the Excise Commissioner.

MR. K. NARAYANAPERUMAL NADAR: May I know the reason which prompted him to make this recommendation?

MR. M. P. JOSEPH: Sales begin usually at 7 P. M; it was thought 8 P. M. too early an hour to close the shop.

Price for jaggery arrack in Nagercoil Distillery.

56. ***MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state whether the supply price for jaggery arrack in Nagercoil Distillery was reduced from Bh. Rs. 2-2-0 to Bh. Rs. 2-0-0 ?

MR. M. P. JOSEPH: Yes.

MR. K. NARAYANAPERUMAL NADAR: May I know whether the issue price of jaggery arrack was reduced in the Nagercoil Distillery after it was sold to Messrs. Parry and Co.?

MR. M. P. JOSEPH: The supply price was reduced before Messrs. Parry and Co., took up the concern.

Conviction of Shima Raja Pandian.

57. ***MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state:

(*a*) whether one Shima Raja Pandian of Madura was early in October 1938 convicted by the Shencotta Magistrate along with Messrs. Karuppuswami Asari and Krishnaswami Chetty;

(*b*) whether subsequently he was taken to the Quilon Kashba Police Station;

(*c*) if the answer to part (*b*) is in the affirmative, the date of taking him there; and

(*d*) when and why he was taken to the Quilon District Hospital?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: (*a*) Yes.

(*b*) Yes.

(*c*) 20-2-1114

(*d*) He was taken to the Quilon District Hospital on 21-2-1114 as he complained that he was suffering from chest pain.

Drinking water in Eraniel.

58. ***MR. C. JEBAMONY NADAR**: Will the Government be pleased to state:

(*a*) whether any investigation was conducted by them as to the availability of good drinking water from the existing wells in the town of Eraniel, Kalkulam taluk;

(*b*) the result of the said investigation;

(*c*) whether there is any well in that town, the water in which is not brackish or saline;

(*d*) whether the officer appointed for investigation of tube wells visited this town and conducted any investigation *re* the need of tube wells; and

(*e*) if so, whether he has recommended any tube wells for this town?

MR. G. B. E. TRUSCOTT: (*a*) Yes.

(*b*) It was found that almost all the wells in the town yield only brackish water except a few in the banks of the Valliyar.

(*c*) *Vide* reply to part (*b*).

(*d*) Yes.

(*e*) No.

MR. C. JEBAMONY NADAR: May I know whether any special recommendation was made?

MR. G. B. E. TRUSCOTT: Made to whom?

MR. C. JEBAMONY NADAR: May I know the nature of the recommendation?

MR. G. B. E. TRUSCOTT: I say "made to whom".

PRESIDENT: The honourable member should address the chair.

MR. C. JEBAMONY NADAR: May I know the nature of the specific recommendation made?

MR. G. B. E. TRUSCOTT: Sir, I want to know to whom the recommendation was made?

MR C. JEBAMONY NADAR. To Government.

MR. G. B. E TRUSCOTT: Recommendations and representations made to Government are confidential.

Strike in Schools.

59. ***MR. S. NARAYANA PILLAI**: Will the Government be pleased to lay on the table a list of the Schools in the State in which students struck work or carried on picketing in 1114, resulting in low attendance in the schools, together with the action taken by the authorities in the matter?

MR. A. GOPALA MENON: A list is placed on the Secretary's table. Prompt steps were taken to carry on work in schools during the strike enlisting local support. Disciplinary action was taken by the department against the teachers, students and managements whose behaviour called for notice.

MR. P. SIVARAMA PILLAI (*Meenachil* cum *Tholupuzha*): May I know from Government what sort of disciplinary action was taken by the authorities against the managements concerned?

MR. A. GOPALA MENON: Sir, I did not hear the question.

PRESIDENT: The honourable member wants to know the nature of the disciplinary action taken against the managements concerned.

MR. A. GOPALA MENON: Disciplinary action was taken by way of cutting short their grants and such other privileges they enjoyed.

MR. P. SIVARAMA PILLAI: What is the name of the institution whose grant was with-held?

MR. A. GOPALA MENON: The names are among those given in the list.

Recruitment to the Police Department.

60. ***MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state:

(*a*) whether the 200 Police Constables who were recruited during the month of Thulam 1114 M. E. and the 500 Police Constables who were recruited during the month of Makaram 1114 M. E. were recruited in consultation with the Public Service Commissioner and in accordance with the Public Service Recruitment Rules, 1111;

(*b*) if the answers to part (*a*) are in the negative, the reasons therefor; and

(*c*) whether they will be pleased to lay on the table a statement, by caste, of those recruited on these occasions?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: (*a*) The number recruited in Thulam and Makaram 1114 was 101 and 3 respectively.

(*b*) As the recruitment was for a special purpose of an urgent nature the power of recruitment was delegated to the head of the department.

(*c*) The statement is laid on the table.

MR. K. R. NARAYANAN: ഇവിടെ തന്നിട്ടുള്ള ലിസ്റ്റ് നോക്കിയതിൽ മൂന്നു ഈഴവരേയും ൧൯ നായരേയും നിയമിച്ചിട്ടുണ്ടെന്നു കാണുന്നുണ്ട്. ഈഴവർമാത്രം മൂന്നുപേർ ആയിപ്പോയതു് അവരിൽ അപേക്ഷകന്മാർ കുറവായിരുന്നതുകൊണ്ടോ അതല്ല മററു വല്ല കാരണത്താലാണോ എന്നറിയണം?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Yes Sir, due to the paucity of getting applicants of the right type from the particular community.

MR. K. R NARAYANAN: പോലീസ്ഡിപ്പാർട്ടുമെൻറിൽ വളരെക്കാലമായി നായന്മാരുടെ നിയമനം കൂടുതലാണെന്നുള്ള വിവരം അറിയാമോ?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Yes Sir, In that view I took care to see unrepresented communities also get places. I may also say that not only on communal basis but also on the basis of sex, persons were recruited.

MR. K. R. NARAYANAN: പബ്ളിക്ക്സർവീസ കമ്മീഷണരോട് ആലോചിക്കാതെ ഇങ്ങിനെയുള്ള നിയമനം നടത്തുന്നതിനു അത്ര അത്യാവശ്യമായ പരിതസ്ഥിതി എന്താണു വന്നിട്ടുള്ളതു്.

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Sir, the need for that arose in this way. The fact that subversive forces were let loose by a certain section of the politicians in the State necessitated this deviation from the ordinary course of procedure.

MR. K. R. NARAYANAN: ഈ നിയമനം നടത്തിയ അവസരത്തിൽ മുസ്ലീമിങ്ങളുടെയിടയിൽ നിന്നും എത്ര അപേക്ഷകന്മാർ ഉണ്ടായിരുന്നു എന്നു പറയാമോ?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I am not sure how many were there.

MR. K. R. NARAYANAN: ഈഴവരുടെ ജനസംഖ്യ മുസ്ലീമിങ്ങളുടെ മൂന്നിരട്ടിയാണെന്നുള്ള വിവരം അറിയാമോ?

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*Vide Appendix IV.—Page—

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Yes Sir, I know.

MR. K. R. NARAYANAN: നടപ്പിലിരിക്കുന്ന നിയമനത്തിൽ ഈഴവർക്ക് മുസ്ലീമിങ്ങളുടെ പകുതിപോലുമില്ലെന്നുള്ള വിവരം അറിയാമോ?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: It is not my fault, Sir. I made the selection from the candidates best suited to the post and I may say that I have not chosen persons with any communal bias in my mind.

MR. K. R. NARAYANAN: ഈ വിഷയത്തിൽ ഇത്രയും കുഴപ്പം വരാനിടയായതു് പബ്ളിക്കുസർവിസ് കമ്മിഷണരോടു ആലോചിക്കാതെ നിയമനം നടത്തിയതുകൊണ്ടാണെന്നു അനുമാനിക്കുന്നതിൽ തെററുണ്ടോ?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I am sorry, Sir, I cannot subscribe to that view for the reason that the Public Service Commissioner may not be aware of the criteria for the recruitment to a police force intended to serve a special purpose.

MR. N. NARAYANA KURUP. May I know from the honourable member whether non-Travancoreans were recruited?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Yes Sir.

MR. N. NARAYANA KURUP: May I know their number?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Only 70 Sir.

MR. N. NARAYANA KURUP: May I know whether Travancoreans did not apply in sufficient number?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Sir, this needs a little bit of a statement. As a result of the State Congress activities and propaganda in spreading seeds of disloyalty and disaffection I had my doubts whether the local men would suffice to check the spread of this evil with the result I had to go outside Travancore and select persons of merit who are specially capable of doing this. So I selected a good number of ex-soldiers, sappers and miners from outside, who will cope with lawless activities, such as destruction of bridges, cutting of trees and blocking of roads etc., which were a feature of the disturbances.

MR. N. NARAYANA KURUP: May I know whether the honourable member could cope with the situation in the whole State with this 60 or 70 men from outside?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB. Well, Sir, this question pre-supposes that a situation will be created in the whole of the State. But, for that matter, I can say that the movement is dying a natural death.

MR. N. NARAYANA KURUP: May I know on what basis the member———

PRESIDENT: Order, order. The question whether the movement would die or not is a matter of future event which need not be discussed here.

MR. T. C. KESAVA PILLAI: May I know whether ladies were recruited in the Police force?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Sir, I have already stated that I have made recruitments not only on communal basis but also on sex considerations.

MR. E. P. VARGHESE (*Ambalapuzha* cum *Shertala*): May I know whether before recruitment notices to the effect were published?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: Certainly Sir.

MR. E. P. VARGHESE: May I know how many Latin Catholics applied?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I claim notice, Sir.

MR. E. P. VARGHESE: May I know whether Government is aware that the Latin Catholics number a little more than the Muslims in population?

(Mr. C. Jebamony Nadar rose up to speak.)

PRESIDENT: Order, order.

MR. C. JEBAMONY NADAR: May I know from the honourable member whether there was any application from persons belonging to the S. I. U. C. Community?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I cannot answer this question off hand, Sir.

MR. K. P. KOCHUKORA THARAKAN: ഇപ്പോൾ റിക്രൂട്ട ചെയ്തിരിക്കുന്നതു പബ്ളിക്ക സർവീസ് കമ്മിഷണർ നിശ്ചയിച്ചിട്ടുള്ള പരീക്ഷായോഗ്യതയുള്ളവരെയാണോ?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: The qualifications fixed for recruitment are physical fitness, educational qualifications and other considerations, and above all loyalty to the Raj. This is always borne in mind in the matter of recruitment.

MR. K. P. KOCHUKORA THARAKAN: റിക്രൂട്ട ചെയ്തിട്ടുള്ളവരെല്ലാം എഡ്യൂക്കേഷൻ ഉള്ളവരാണോ?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: They possess at least the minimum educational qualification.

Manager of the office of the Director of Registration.

61. * **MR. K. P. KOCHUKORA THARAKAN**: Will the Government be pleased to state:

(*a*) the scale of pay of the Manager of the office of the Director of Registration;

(*b*) the scale of pay of the Head Translator to Government;

(*c*) whether Mr. P. Seshadri Aiyar, B. A., M. L., Manager of the office of the Director of Registration has been appointed acting Head Translator to Government; and

(*d*) if so, the salary he received as Manager of the Registration Director's office and the salary he received when he was acting as the Head Translator to Government?

MR. M. K. NILAKANTA AIYAR: (*a*) Rs. 100-5/2-125.

(*b*) Rs. 200-10/2-250.

(*c*) Yes.

(*d*) Salary as Manager of the Registration Director's Office Rs. 100
Salary as Ag. Head Translator to Government Rs. 140.

Appendix I.

Vide Answer to Question No. 31.

Statement by caste of appointments made from 1st Chingom 1110 to 1st Chingom 1114 in the Public Health Department.

No.	Name.	Caste.	Scale of pay. Rs. Ch. C.	Date of appointment.	Remarks.
1	N. M. Ghouse Khan	Muslim	15	1st Dhanu 1110	Appointment and continuous service before 1st Chingom 1110.
2	M. I. David	Christian, Marthoma	15	10th Makaram 1110	Do.
3	G. Palpu Pillai	Hindu, Nair	20-25	Kumbhom 1110	Do.
4	V. Ramachandran Potti	,, Brahmin others	14	15th Meenom 1110	Do.
5	N. Sekhara Pillai	,, Nair	25-40	Medom 1110	Do.
6	V. C. Alexander	Christian, Jacobite	25-40	1st Chingom 1112	Do.
7	M. A. Unnikrishna Menon	Hindu, Nair	Do.	Do.	Do.
8	N. Nilakantan Nair	Do.	Do.	Do.	Do.
9	P. V. Chacko	Other Christian	Do.	Do.	Do.
10	V. Sreerangan	Hindu, Ezhava	Do.	Do.	Do.
11	P. K. Joseph	Syrian Catholic	20-25	Do.	Do.
12	K. Velayudhan Pillai	Hindu, Nair	35-50	Do.	Do.
13	K. C. Martha	Christian, Marthoma	25-40	Do.	Do.
14	K. Bharathi	Hindu Ezhava	Do.	Do.	Do.
15	Victy Vedakan	South Indian United Church	Do.	Do.	Do.
16	V. C. Abraham	Christian, Jacobite	Do.	Do.	Do.
17	S. Narayana Pillai	Hindu, Nair	9-11	Do.	Do.
18	M. Thankamma	Do.	25-40	Do.	Do.
19	K. Sivasankaran Nair	Do.	12-15	Do.	Do.
20	K. Parameswaran Pillai	Do.	9-11	Do.	Do.
21	K. Raghavan Asari	Other Hindu (Kammala)	Do.	Do.	Do.
22	K. Narayanan Nair	Hindu, Nair	Do.	Do.	Do.
23	C. Varghese	Christian, Marthoma	Do.	Do.	Do.
24	N. Thanu Pillai	Hindu, Nair	Do.	Do.	Do.
25	V. N. Vasudevan Nair	Do.	25-40	Do.	Do.
26	P. Madhavan Pillai	Do.	9-11	Do.	Do.
27	P. Velu Pillai	Do.	14	Do.	Do.
28	P. Chellamma	Do.	20-25	7th Kumbhom 1112	Do.
29	P. Kamalamma	Do.	Do.	13th Thulam 1113	Do.

Appendix II.

***Vide* Answer to Question No. 33.**

List showing the appointments made in the Anchal Department from 1-1-1110 to 1-1-1114.

Names.	Pay	Date of appointment.	Caste.
	Rs.		
K. T. Varghese	20	13.1-1110	Jacobite
A. Sankara Pillai	20	11-4-1110	Nair
K. Kalyanikutty Amma	20	14-4-1110	"
T. I. Isaac	20	20-5-1110	Protestant (Mala Arayn)
G. Krishna Pillai	20	8-7-1111	Nair
Sultan Pillai	40	1-2-1111	Muslim
Bhavani Amma	20	25-8-1111	Nair }
Parukutty Amma	20	"	" }
M. K. Raman Pillai	20	1-2-1112	"
N. Sivasankara Pillai	20	"	"
P. I. John	20	"	Marthomite
G. Vasudevan Nair	20	"	Nair
Subramonian Potty	20	"	Brahmin
T. K Philipose	20	"	Jacobite
S. Govinda Pillai	20	"	Nair
J. Yohannan	20	"	Jacobite
L. Madhavan Pillai	20	"	Vellala
G Kutten Pillai	20	"	Nair,
P. Narayana Pillai	20	17-2-1112	"
P. Kesavan Nair	20	18-8-1112	"
M. K. Sankara Pillai	20	1-12-1113	"
K. M. Thomas	20	"	Marthomite
P. T. Mani	20	"	Jacobite
N. G. Easwaran Nambouri	20	"	Brahmin (Malayala)
K Chakrapani Warier	20	"	Warrier
N Subramonia Pillai	20	"	Nair
S. Thirumala Iyengar	20	"	Brahmin
Kochu Koshy	20	"	Jacobite
S. Ganapathy Potty	20	"	Brahmin
C. K. Philipose	20	"	Jacobite
K. M. Thomas	20	"	Marthomite
V. C. Kunjandy	20	"	Jacobite
K. K Nilakanta Pillai	20	"	Nair
K. S Mathew	20	"	Syrian Catholic
K. G. George	20	"	Jacobite
N. Raman Kutty	20	"	Ezhava
A. K. Ananthanarayana Iyer	20	"	Brahmin
P V. Govindaswami Iyer	20	"	"
N. K. Kesava Pillai	20	"	Nair
P. K. Narayani	20	"	Ezhava
G. Padmanabha Pillai	20	"	Nair
C. S. Palpu	20	"	Ezhava
N. Krishnan Nair	20	"	Nair
T. Chockalingom Pillai	20	"	Vellala

Appendix III.

Answer to Question No. 51.

Nadar candidates advised for recruitment to the Intermediate Division during 1113 M. E.

Department.	Appointment.		
	Name.	Pay.	No.
Various	Clerk.	20-25	10
	Clerk-typist.	20-25	1
Excise	Petty Officer.	22	1
Medical	Compounder.	20-25	1
Revenue	Computer Draftsman.	20-25	1
	Accountant.	14	1
State Forces	Clerk.	14 and allowances.	1
			16

Appendix IV.

***Vide* Answer to Question No. 60**

Statement by caste of Constables recruited.

Brahmin	...	1
Nayar	...	29
Other Caste Hindu	...	25
Kammalas	...	3
Nadars	...	6
Ezhavas	...	3
Pulayas (Cheramar)	...	...
Other Hindu	...	25
Muslims	...	7
Jacobite	...	...
Marthomite	...	...
Syriac Catholic	...	1
Latin Catholic	...	1
S. I. U. C.	...	...
Other Christians	...	3
Total	...	104

ANNOUNCEMENT OF THE RESULT OF THE ELECTION OF A MEMBER TO THE STANDING FINANCE COMMITTEE.

PRESIDENT: I have to announce that a meeting held on last Saturday to elect a member for the Standing Finance Committee, Mr. P. Sivarama Pillai got 28 votes which is more than what the other candidates got. So, Mr. P. Sivarama Pillai is duly elected to the Standing Finance Committee.

LEGISLATIVE BUSINESS.

MR. KOTTALIL P. ABRAHAM (*Muvattupuzha* cum *Devicolam*): Sir, under standing order 27 of the Legislative Rules I request that permission may be granted to me to move that Item No. * I in the Legislative business be postponed for discussion till Items 2 and 3 are finished.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Sir, I second the motion.

PRESIDENT: Does the honourable member mean to move for a change in the order of business?

MR. KOTTALIL P. ABRAHAM: Yes Sir.

PRESIDENT: Then you may move for a change in the order of business that Items Nos. 2 and 3 be taken up before Item No. 1 is taken up.

MR. KOTTALIL P. ABRAHAM: Sir, I move that Items Nos. 2 and 3 be taken up before Item No. 1.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I second the motion, Sir

PRESIDENT: Moved and seconded that Items Nos. 2 and 3 be taken up before Item No. 1. Does anybody want to make any observation on this motion? Not even the mover of Item No. 1?

SRIMATI T. NARAYANI AMMA (*Nominated*): Sir, I rise to oppose the motion, because in my view as the Bill has come for the second reading stage it may take up more time than the other Bills. The honourable Member who has to speak on Items Nos. 2 & 3 may take up much time. So in my opinion the business of the House should be conducted as they are arranged in the order paper. Moreover I may not get time enough to speak on Item No. I later on. With these words I oppose the motion.

MR. JOSEPH VITHAYATHIL (*Kunnatnad* cum *Parur*): Sir, I support the motion before the House. Item No. 3 is only a motion for re-introducing the Bill. There will be no discussion on the principle of the Bill. So this can be disposed early, and other items may follow.

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*Item No. 1. Second reading and further stages of the Travancore Child Marriage Restraint Bill.

,, 2. Motion for leave to take charge of the Travancore Special Marriage and Succession Bill.

,, 3. Motion for leave to introduce the Travancore Agricultural Debt Relief Act Amendment Bill.

MR. S. KRISHNA AIYAR (*Nominated*) : I would suggest that certain rules should be followed for the procedure of this House giving certain Bills at certain stage precedence over the other matters of business.

The motion was put to the vote of the House and carried. Leave was granted.

THE TRAVANCORE SPECIAL MARRIAGE AND SUCCESSION BILL.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : Sir, I beg to move under standing order No. 4 (2) in the standing order of the Sri Mulam Assembly that leave be granted to me to take charge and continue the Travancore Special Marriage and Succession Bill introduced by Mr. K. Kunjukrishna Pillai in the first Assembly.

MR. E. SUBRAMONIA AIYAR (*Nominated*) : I second the motion.

The motion was put to the vote of the House and carried. Leave was granted.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : Sir, now I may be given permission to propose the Members of the Select Committee to which the Bill may be referred. So I move Sir, that a Select Committee be constituted consisting of the following members:—

1 Mr. S. Chattanatha Karayalar.
2 Mr. S. Krishna Aiyar,
3 Mr. E. Subramonia Aiyar.
4 Mr. N. Ramakrishna Pillai.
5 Sry. Devaki Antharjanam.
6 Mr. K. R. Narryanan.
7 Mr. K. C. Karunakaran.
8 Mr. T. T. Kesavan Sastri.
9 Mr. N. John Joseph
10 Mr. M. L. Janardhanan Pillai
11 Mr. Kottalil P. Abraham
12 Mr. P. C. Adichan
13 Mr. D. Francis
14 Mr. Joseph Vithayathil
15 Mr. P. Sivarama Pillai
16 Mr. Kynikara M. Padmanabha Pillai
17 Mr. Puthupally S. Krishna Pillai, and
18 Mr. Puliyoor T. P. Velayudhan Pillai

and the committee to submit its report within 4 months.

MR. T. T. KESAVAN SASTRI (*Nominated*): Sir, I second the motion.

The motion was put to the vote of the House and carried and Select Committee was constituted.

THE TRAVANCORE AGRICULTURISTS' RELIEF ACT (AMENDMENT) BILL.

MR. JOSEPH VITHAYATHIL : Sir, I move that leave may be granted to me to introduce the Travancore Agriculturists' Relief Act (Amendment) Bill. Under Standing Order 31 I can make a statement in support of the motion only with the permission of the President and that if the motion is opposed.

PRESIDENT : Is the motion opposed ? As the motion is not opposed it will be put to the vote of the House. The question before the House is whether leave may be granted to introduce the Travancore Agriculturists' Relief Act (Amendment) Bill.

The motion was put to the vote of the House and carried and leave was granted.

THE TRAVANCORE CHILD MARRIAGE RESTRAINT BILL.

PRESIDENT : I find that on the last occasion, Mr. E. Subramonia Iyer just expressed his thankfulness and was about to start with his speech. Mr. E. Subramonia Iyer may begin now.

MR. E. SUBRAMONIA AIYAR : Sir, as I said the other day, I am very much thankful to the honourable members of this Assembly who have been good enough to state their reasons for opposing the amendment put forward by me. So far as I am able to understand them, their complaint seems to be that if my amendment is accepted the Bill might become futile, at any rate the utility of the Bill would be very much diminished. Sir, I regret I am unable to agree with the views of those honourable members who thought it best to oppose the amendment on that ground. So far as the amendment is concerned, taking Section 6, it could be seen if sub-clause (2) is deleted the provision would not be touched in any serious way; only it will make the Section more reasonable and more consistent with our notions of rights and liabilities as understood in civilized jurisprudence. I pray your permission to read Section 6 over again :

> "Where a minor contracts a child marriage, any person having charge of the minor whether as a parent or guardian or in any other capacity lawful or unlawful" (relatives are spread very wide) "who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised shall be punished with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both :"

So, so far as this section goes, it not only makes a person liable for his acts but also for defaults. If, as a matter of fact, child marriage is something to be restrained, certainly any person who actually brings about or promotes a child marriage must be punished. Then, a person who permits it to be solemnised may not come under the words actual promotion of the marriage. Therefore, it will cover up those cases which may not come under the actual promotion of the marriage and this term is wide enough for the meaning of the word 'permits' will depend more or less upon the sub-conscious bias of the presiding officer who hears the case. Not satisfied with that, the Legislature wanted to see that an omission to prevent it from being solemnised is made punishable. Well, I do not attack that aspect of the section but when we come to clause, 2 when negligence is to be established, the section says :

> "For the purpose of this section, it shall be presumed" (not, it may be presumed, because that will not meet the situation) unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised."

It comes to this: well, if a child marriage takes place, or to be more accurate, if a minor contracts a child marriage, then without any further process the parent or the guardian or any other person having charge of the minor can be hauled up before the court and unless he is able to show that there was not negligence in preventing the marriage, immediately he becomes subject to the penalty of law. Now if this amendment is accepted how, I ask, is the substance of the provision evaded? How does the act become futile? Well, taking away the proviso, even under Section 6 certainly any person who promotes a child marriage will be liable to punnishment. Any one who permits it will also be liable. That is a duty cast on the person in charge of the minor. If the child marriage takes place and if it is proved that he has not taken sufficent care, the care which is expected of him to prevent the marriage, certainly, he will be held liable. The real question is whether the act will be ineffective in the absence of the proviso. To my mind, it appears that if liberty of action should not be completely put an end to, Section 6 is more than sufficient. No doubt, I am aware that there is a tendency at present due to warring ideologies rather due to post-war neurosis, an idea, I say in the so called reformist that they can construct or reconstruct society by what is called legislation Well, I do not want to say anything about that attitude on the part of such persons. I do dot propose to go into those reasons which may have influenced us living under modern conditions to take up a particular view. But this is sufficent answer, I say to the contentions put forward by honourable members that if this proviso goes, the Bill is knocked on the head. That is one objection.

Another objection, or another reason put forward by the honourable members is that unless such a proviso is introduced the parents and guardians will not take sufficient care to prevent such marriages. There also, I may say, I am not quite in agreement with the views propounded by the honourable members I may assure the honourable members here that so far as that community which will be seriously affected by this piece of legislation is concerned, it will be long before the germ of disobedience of law may find place in them. (*Hear, hear*). And we may fight with all the vehemence and with all the force which we can command only metaphorical fight the imposition of a legislation upon us which is not in conformity with our tradition and culture which will, we believe whether rightly or wrongly, jeoparadise the foundations of our culture. But, in spite of that, if the law is passed, certainly as preachers of *Dharma* and as persons who follow *Dharma*, I may assure you that no Brahmin, if he deserves the name of a Brahmin will preach or adopt a policy of disobedience or breach of law. So, all these measures must not be taken for purposes of safeguarding the Brahmin against any temptation to break the law Further, if you are going to make a law, unless there is absolute necessity, we should not depart from accepted notions in civilised jurisprudence. In fact, what is attempted here in this proviso is a presumption rather a conclusive presumption for purposes of imposing a criminal liability. Now certainly, in law I know progress is made by presumptions as well as by fiction;

I am fully aware of that, but relying upon presumptions as well as fiction, still, there should be consistency or a system in that method. We do not draw a presumption in law or build a presumption if there is not a solid fact to support it. For example, under Section 372, I believe, or 373 of the Penal Code, there is a section which has been enacted for purposes of safeguarding sexual purity, or preventing, so to speak, prostitution, selling or disposing of a minor for an illegitimate purpose. Now, in that section there is an explanation added: namely, the selling or disposing of a minor to the keeper of a brothel will be deemed to be a sale as contemplated by that section. That I can understand. There, the presumption is good and right, I would say, because there is the fact that the sale of the minor or the disposal of the minor is to a brothel keeper and therefore any person, any sane person will be able to see that the purpose of the sale cannot be for anything else. So the law rightly had drawn that presumption. If we may go to the history of this presumption, one will be able to see that there is a good deal of experience and common sense to justify the same. Again there is the presumption which we shall draw when the child born to the lady during the subsistence of a lawful marriage is presumed to be the child of the lady's husband. This is right for more reasons than one, because such a presumption is always true and must be true. It must be held to be true in the interests of the society. There is the substantial fact, namely, the existence of a legal marriage between two individuals and a child is born. The presumption is then good. Any student of law, will be able to see that if a presumption is to be drawn, it does not depend upon merely a fiat of the legislature. When we enact a rule of presumption what we have to see is the basis or the decisive fact upon which we can rest the presumption. That is what we ought to see. Now what is the decisive fact here. The decisive fact is that a minor contracts a child marriage; then there is the second fact that the minor is a minor in charge of a particular individual. From these facts are we to draw the presumption that the guardian or the parent, as the case may be, has negligently omitted to prevent the marriage. My submission is that in this case there is no such decisive fact which will enable us or justify us in drawing such presumption. In a case of presumption there is always a major premise; there is a certain fact. From that fact the other or inferred fact is a necessary consequence. If you look to the Criminal Law in England there also you will see Sections dealing with provisions which treat the relationship between grown up people and minors. There is a liability cast on another persons in the English Criminal Law to provide clothing and other things to children and if a person neglects to provide such necessaries, then the law says the presumption may be drawn and if consequent thereof, some bodily injury is caused to the child by starvation or otherwise the law draws the presumption that the father or the parent to whom the child was entrusted was negligent to provide the child with the necessaries.

[Mr. E. Subramonia Aiyar.]

If bodily injury is caused to the child by starvation, it is presumed that the parent is responsible for that; naturally, the child cannot maintain itself, to find provision for itself, and therefore, it is presumed that if an injury is caused to the child, it is due to the neglect of the parent.

If you refer to another provision of this branch of English law, you find that, if a child under three years of age sleeps with a person above 16 years of age who is drunk, and the child dies of overlapping, the law presumes that the older person is guilty of overlapping. The reason is not far to seek. It is not only the question of age; he has to be drunk. There has to be that additional fact also.

Sir, while enacting laws of presumptions, we have to be very careful. In the present Bill, we are not legislating merely for children who are under five or six years of age; the law relates to persons who are minors according to the definition contained in the Bill. According to the Bill, a minor is a person under 18 years of age if a male. Now, if a boy of 17 contracts a marriage, it is child marriage under this Bill and the unfortunate parent, for the sin of having been responsible for the coming into existence of this minor, for the sin of having done something without anticipating a legislation like the present one, is held liable. I shall give an illustration.

Suppose a lady of twenty-five entices a boy of seventeen. Certainly, it is not an improbability, not at all, especially in these days when there is so much talk about the right for self expression. Suppose such lady of twenty five is able to persuade the youth of seventeen to marry her. The marriage is 'child marriage' under this Bill since the boy comes within the definition of 'minor' in the Bill. Now, what is the consequence? The father of the boy will be penalised unless he prepares himself with all manner of evidence, good, bad and indifferent, to show that he did not negligently fail to prevent the marriage.

Therefore, Sir, a severe duty is cast upon the parent to see that his son of seventeen years of age is not enticed away, and does not come under the influence of society women. Sir, certainly boys have to be educated. And, those days when education was confined to *gurukula*, when children were subject to influences only of the home whether of the parent or of the *guru*, sober influences, steadying influences, when children were under the absolute control of elderly persons of ripe experience who always realised that though their feet might be on *terra firma* (solid earth) their eyes were turned up towards spiritual salvation, those golden days are gone. True *Brahmacharya* was itself sufficient restraint, adequate safeguard against undesirable tendencies. But what is the situation now? The system of education is now entirely different from what it was in the past. Mass education, may I call it? Boys and girls are sent to public schools. Their mingling together freely might have its own advantages. But no one can shut

his eyes to the fact that at present the equilibrium of the younger generation is not steady or stable. Sir, temperamentally, I am always unwilling to be hard upon the younger generation; I would be rather hard upon myself and people of my age; because our hopes are centred on the youth. But, when I realise that the present day youth are sure to be attracted by all sorts of blandishments, physical, intellectual and even political, around them, I dare say, to ask the parent, the father or the guardian, or the person in charge of institution, to hold himself responsible for the sporadic activities of boys of seventeen, would be too severe and hard. Honestly, if I had known that such a law was going to be introduced in the legislature, I would have thought not once or twice, but a dozen times before I bound myself with the string of matrimony. Sir, I say this in all seriousness. Certainly, I am not afraid of the responsibilities of marital life; I have succeeded in keeping my products under control. But what I am submitting is that the problem of control of one's grown up children is every day becoming more and more difficult. I should illustrate my position.

My boy is reading in a particular College, let us take it. Naturally he is one among hundreds of students. Suppose a movement is started, and, rightly or wrongly, the majority of the students join it. No doubt, when my boy comes home, I will tell him 'you shall not take part in the movement; your father has been living a sensible, reasonable, moderate life, without taking part in such movements which are against our tradition, against our good name, and which wil be against your progress." Naturally he will ask me one question "Father, what can I do? I am one among hundreds; I will be ex-communicated if I do not join the movement." Certainly, my boy will be drawn into the movement quite against his will.

Sir, I am mentioning this only as an illustration to show how it is not easy in these days to control one's children. My friend Mr. Sivathanu Pillai was saying the other day that if his son would run away from him and contract a child marriage, he would immediately get into his car and run after his son. If my boy contracts child marriage, certainly I would do all in my power to see that somehow he wriggles out of it. But certainly my friend Mr. Sivathanu Pillai would grant what amount of pressure, and influence due or undue, would be necessary to win over a grown up boy who has been entrapped by a modern woman. And, if it chooses her, the woman may demand a big amount by way of something like ransom to agree to leave the boy; in fact, this provision is sure to give room for such blackmailing also.

Sir, let me appeal to my honourable friends that, in considering this provision, they should not lose sight of the fact that it is for the acts of a human being that the penalty is sought to be imposed on his parent or guardian. It is not like the liability imposed on the owner of a wild animal or of a dangerous inanimate object. The law, which holds a person liable for the acts of the dangerous animal which he keeps, is based on the principle that such person keeps the dangerous

[Mr. E. Subramonia Aiyar,]

animal or object for his amusement and should therefore undertake the responsibility. Now, Sir, is it going to be suggested by the legislature that it is for one's amusement that one brings forth children ? I am sure no one will argue like that.

Sir, arguments may be advanced, scriptures may be quoted perhaps, for any proposition; but what we have to consider is whether we would be reasonable in coming to certain conclusions. I am now reminded of the well-known competition or contest between Uddanda Bharati and Kakasseri Nambuthiri, in Malabar. I shall briefly narrate that story. Year after year, in the literary and religious contest which used to be held at Calicut or somewhere in Malabar, a certain Uddanda Bharati used to defeat all the scholars present, and knock off the prize. Naturally, the Nambuthiris of Malabar felt wounded and prayed to God that their community might be blessed, with a prodigy who would defeat this Uddanda Bharati. And, Kakasseri Numbuthiri was born. Even as a boy he proved himself to be a remarkable scholar. In fact, he came to be known as Kakasseri Nambuthiri because he was so keen an observer of things as to be able to distinguish between one crow and another ("*Kaka*" means crow). Naturally, at the next annual contest with Uddanda Bharati, the Bharati was defeated through and through by the young Nambuthiri prodigy. The test was this. The Bharati would go on asserting facts one after another; and his opponent has, if he could, to deny, supported by authorities, the facts asserted by the Bharati. In this contest, Kakasseri Nambuthiri was easily able to deny and disprove every one of the assertions made by the Bharati. Nonplussed and desparate, Uddanda Bharati made the following assertion hoping that naturally the Nambuthiri would not deny it. He said "Your mother is chaste." To the great surprise of the Bharati, Kakasseri Nambutiri said "*Nahi.*" ("No."); and he quoted the relevent Hindu Sastra and asserted how, in a Hindu marriage which lasts for four days, on the first day the girl was married to Indra, and so on, and how only on the fourth day the husband got his rights as husband over the girl.

I refer to this story only to show how the human intellect is so deceptive; in fact, the sharper it is, the more easily are even impossibilities justified, and suggested as possible. Argument can be made available only for the purpose of *Tarka*, controversy, discussion.

We are not here dealing with theoretical law. We are not in the air as it were. When we get out of this *terra firma* and try to regulate our life in the ethereal or some other plane, there may be justification for us to deal with law in the abstract. Whether the other members agree with me in all other matters or not, I am sure that every body will agree with me in this that so far as law is concerned it has not anything to do in the abstract. It cannot operate in vacuum, it is not to be made in the laboratory. It must be applied to the actual facts of life. Therefore if a law does not square with the facts of life, if it

does not square with human intelligence and human ideas, certainly that law is not worth anything. If by analogy you say that nobody compels you to marry, it is a voluntary act on your part, you are marrying for the purpose of amusement and for your pleasure and, if as a result of your actions, half a dozen children come into existence, according to us legislators child marriage as dangerous a thing as the tearing away of human beings by a tiger or a bear, well, Sir, I am not agreeable to that view. Whatever be the analogy, it is far fetched. My submission is that even if there is any necessity for the substantive part of section 6, I would say that the proviso is wholly unnecessary. It is against all canons of accepted criminal jurisprudence. It will never square with what is actually taking place.

MR. N. RAMAKRISHNA PILLAI (*Vaikom* cum *Kottayam*): May I know from the honourable member whether a tutor or a nurse in temporary charge of a minor will come under the Section if he or she fails to prevent the solemnisation of the marriage of the minor?

MR. E. SUBRAMONIA AIYAR: Sir, when I began my speech I referred to Section 6 and stated that the net is spread wide. A tutor or a nurse or even a care-taker will be liable under the Section. For illustration, suppose I leave my boy in Trivandrum and I go with my family for a pilgrimage to Benares and my friend Mr. Ramakrishna Pillai is the care-taker here. Suppose the boy escapes and contracts a child marriage. My friend Mr. Ramakrishna Pillai will be liable. Therefore it is for the court to say whether a person can be brought under the section. I cautiously said that the interpretation of all these things will depend to a considerable extent upon the ideology which operates upon the mind of the judge. No doubt, the judge will administer the law only as it is. He will never make the law but will only administer it as he finds it. But every person, be he a judge or a lawyer or a person acquainted with the courts, will certainly subscribe to this statement of mine, that judges and lawyers and others, particularly judges, often make the law rather than administer it, because the effect of the environments, the traditions of the judge, the ideas current at the time, the intentions of the legislature as thought out by the judge and the mental bent or bias and various other judicial currents are better imagined than described. My admiration has always been that in spite of the weaknesses of human nature our judges are able to show such good and honourable work in spite of, as I said, the modern trend of thought often around us. So, to remove all apprehensions from the mind of my friend, Mr. Ramakrishna Pillai and persons of his way of thinking, the proviso should be deleted. So far as Section 6 is concerned, it can take in every one of us even if we are in temporary or casual custody of a minor for say three hours. Ofcourse in the administration of the law it may be said that care will be taken to see that such things do not take place. But it is just like giving a loaded gun in the hands of a child and seeing that no mischief is committed. Why should you give the loaded gun and then take care to see that the

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mischief is not committed? Why not omit the portion "negligently fails to prevent it from being solemnised"? Promoting the marriage is one thing, but preventing is quite different. What is the exact nature of the prevention? What are the things that a person should do to prevent the solemnisation of the marriage? In fact, if there is any branch of law which does not lead to clarity it is the branch of law which deals with the duty or standard of care which the State expects. What is that standard of care? It is the care that a reasonable man takes and not a reasonable woman. That is because we have no such thing as the average reasonable women in law. With all respect to my friends, the law does not take them to be reasonable. The standard of care is the care of the average reasonable men. Where is the standard for the average reasonable man? Any person who is watching the progress of the law of torts and is aware of the recent decisions will be able to say that there is no certainty in these matters.

MR. JOSEPH VITHAYATHIL: May I know from the honourable member whether the failure on the part of the person in charge of the minor to have the minor under lock and key will not be negligence?

MR. E. SUBRAMONIA AIYAR: Sir, when I moved the amendment I referred to this matter and therefore I do not want to repeat it. If I put my boy in a room and have him under lock and key—I grant that if he is let at large, he will be married by somebody else – I do not know whether an application to the honourable the High Court under the socalled section of *habeus corpus* will not lie against me for wrongful confinement by some interested person, by that lady herself who wants to marry my boy. It is wrongful confinement to have a human being under lock and key. Under the criminal law, even under the Penal Code, 12 is the age of consent and 7 is the age under which a person will not commit an offence and I do not think any person has got the right to put a boy under lock and key without being liable for an action for wrongful confinement. My submission therefore is that this amendment is wholly unnecessary.

MR. P. S. NILAKANTA AIYAR (*Nominated*): May I know from the honourable member whether the wording of the Section "any person having charge of the minor" will include more persons than one at the same time, such as the father, the mother and for instance the steward of a hostel where the boy may be lodging?

MR. E. SUBRAMONIA AIYAR: That is matter of construction again. Whether Section 34 of the Indian Penal Code or the corresponding section, Section 28 of the Travancore Penal Code can be invoked under Section 6, whether two or more persons can have simultaneous charge and if so whether the negligence of the one will be the negligence of the other or whether they have got a common intention or common duty, certainly the honourable member will not expect me to dilate

upon here. Anyhow, I am thankful to the honourable member for pointing out that aspect of the matter.

MR. S. KRISHNA AIYAR: Referring to his illustration of a lady of 25 enticing away a lad of 17 and then marrying him, may I know whether such connubial union will be regarded by any system of law as a legal marriage and if so, which?

MR. E. SUBRAMONIA AIYAR: Sir, certainly a question proceeding from my honourable friend does not admit of a disputation. But the query is whether any system of law will consider the marriage of a boy of 17 with a woman of 25 as valid. I am not aware of any system of law which does not consider it as valid. Even coming to Travancore, there is nothing to declare such a marriage invalid. According to the Bill, so far as a male is concerned a person under 18 is a child and hence I said in my illustration a boy of 17 and a lady of 25. Certainly it cannot be said that any system of law says that the marriage of a boy of 17 with a woman of 25 is not valid unless in a particular country there is a statute which says that marriage can be brought about only by persons who have reached a particular age. In England the age was 14 and 12 for boys and girls respectively. Later on, this was raised. No doubt, in different countries different age-limits have been prescribed.

MR. K. R. RAMASUBBA SASTRI (*Nominated*): May honourable friend was saying about the marriage of a boy of 17 with a woman of 25. My question is whether it is not within the memory of the honourable member that Shakespeare was only 18 at the time of his marriage when the girl he married was about 8 or 10 years his senior.

MR. E. SUBRAMONIA AIYAR: Sir, I take it that my honourable friend, Mr. Krishna Aiyar, was emphasising the disparity of age between the boy and the woman. Perhaps he seems to be of the view that a marriage between a boy of 17 and a lady of 25 or 23 or 21 is not valid. In fact, all that I have got to say in that connection is that, so far as I know, I am not aware of any law which says that a marriage contracted by a boy of 17 with a lady of 25 is *per se* invalid. At any rate, even this Bill does not make such a marriage invalid. Therefore it was that I referred to the incongruity here by emphasising the distinction between a child and a minor. Minor is a person under 18 so far as a male is concerned and a child also is under 18. But so far as the female is concerned, a child is a person under 14 but a person under 18 is a minor. Therefore it was I never wanted to make the female a child and hence I said a lady of 25 because the age of the female is above 14. If the lady is 20 she is not a child and she is not a minor. But the boy is 17. He is a child and he is also a minor. Such a marriage will be a lady contracting a child marriage. The lady may be punished under section 3 but the boy cannot be punished under the section at all. But the boy's father will be punished unless he is able to show to the satisfaction of the presiding officer that he had taken all possible care to see that the boy did not come within the sphere of influence of the lady. Certainly not a very desirable thing

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if the influence of ladies are considered by societies to be so bad. I am not of that view at all. They are a very steadying influence upon us and certainly without them there is no life at all. Therefore I shall be the last person to say that the influence of ladies upon a child or a boy will be of a pernicious character. But even in the case of roses we know there are thorns in them. But in the same way, ladies are angels, they are persons who practically maintain this universe, without them we shall be nowhere, but in spite of all their goodness, in spite of all their utility, there is a certain weakness common to them and us, but stronger in them than in us. Therefore it is I said that when we legislate we must for the time being take away the proviso and then see how many cases of negligent failures happen. Let us see the operation of the law. There is no hurry about it. In fact the evil is not so pernicious here as it is elsewhere To day I had the curiousity to look into the Select Committee's report on the Sarda Act. They said that according to the census of 1931 there are about 300 or 400 widows one year old. No such evil exists in our State. Certainly none of us will be prepared to say that the there are child widows one year old, two years old, three years old, four years old or five years old. If a parent disposes of his child before it is one year old as a chattel to somebody else, certainly he must be segregated and isolated or we may even adopt the policy that is adopted by certain ideologists on the continent that such people are not for the good of the world and that measures should be taken to stop their breeding if not to exterminate them Such a policy may be welcomed by any reformer. Because a particular state of things existed elsewhere among other people, it is no reason why we in Travancore should think of placing these fetters upon normal, quiet, sane people like ourselves.

If this particular state of things existed among the Brahmins or some people elsewhere, that is no reason for placing these fetters upon the normal, quiet, resigned people like us in Travancore. A question may be pertinently put, "why do you fight so much over all these matters? You are not going to be hauled up before a criminal court. For you are not going to act against the law and therefore let it be in the Statute Book. If the necessity arises, we shall use it." That sort of argument is not proper. The environments not acceptable must be conducive to peaceful existence. One should not be always in dread of something which might happen; one should not be allowed to think that he should live in terror always. If this proviso remains in the Statute Book and if I have a boy for instance, I shall always be reminded of some terror attending on me. If I do not see my boy by 6'o clock in the night, (it might be he might have gone for tennis) I have to remain anxious till he returns. If he delays for a long time, there is the terror that he might have been carried away by some lady. The existence of sections like these have a psychological effect. It is not really the actual restraint that causes the trouble. The fear of restraint is more devastating. It narrows the man's vision. It dwarfs

him. I am aware that living in society, necessitates a certain amount of restraint upon the freedom of self-assertion. Nevertheless it seems to me that one should have as much freedom as possible to develop oneself freely in the way he likes. If you turn one side, there is the municipal law staring at you; if you turn another side, there is the sanitary law; if you turn to the right there is the police law; if you be a little indifferent or be in a moment of depression, and it is our every-day experience that a person is not always happy and is often subject to moods of depression the law of negligence stares at you. When a man is put to the necessity of thinking about something always which might happen to him seriously, how is he to adjust himself in the world; how to shape his progress in the future? If he is to feel nervous always, how is he to lead his daily life? Is he to spend his days in fear? It is not that the laws made by man have no effect upon his mind; they have a psychological effect. Whenever you legislate, see that the activities of the individual are not crippled. See whether it will make or mar his evolution. This constant dread of something which might happen quite unexpectedly is not conducive to the happiness of an individual. Such a phenomenon will dwarf him. So, I appeal to the House to accept my amendment.

MR. S. KRISHNA AIYAR: I am glad to express my very great appreciation to the learned exposition of the difficulties of sub-clause (ii) to Section 6 at the hands of Mr. Subramonia Aiyar. But I find that there is some legal defect in accepting it.

MR. K. R. RAMASUBBA SASTRI: Is the member in order in making a speech after the reply is over?

PRESIDENT: He is raising only a technical point.

MR. S. KRISHNA AIYAR: I merely confine myself to the question of law arising in this sub-section. Under Standing Orders No. 24 (2), we find as follows —

> "An amendment cannot be moved which can have the moral effect of a negative vote."

This very point was ruled once. In one of the Rulings of the Chair reported at page 62 from the Select Rulings, the substance is as follows:

> "When Mr. G. Raman Menon moved for the deletion of clauses 3 to 5 in the Mines and Minerals Bill, the Law Member raised a point of order whether by accepting the amendment the House would not be going back on the principle that had already been accepted by it.
>
> *Mr V. Subba Aiyar also raised the following objection*; "I would also submit that the amendment is not in order, but not on the ground urged by my friend Mr. Parameswaran Pillai. The amendment proposes to delete certain clauses in the Bill. That is against Standing Order No. 24 (2) which runs as follows:—
>
> > "An amendment may not be moved which has merely the effect of a negative vote."

[Mr. S. Krishna Aiyar]

The President ruled: "Mr. Raman Menon, I find it necessary to rule both on the technical ground stated by Mr. Subba Aiyar and on the ground of substance stated by the Law Member, that your amendment is out of order."

That is the position. Under these circumstances, I doubt whether Mr. Subramonia Aiyar's amendment is in order.

MR. PUTHUPALLI S. KRISHNA PILLAI (*Legal Remembrancer to Government*): I may be permitted to say that during the Budget Debate in 1113, the Chair ruled on an identical question that a motion for the deletion of a whole clause would not be in order. If an amendment deals with the deletion of a sub-clause, the Chair held that that was in order. In the present case, the amendment seeks to delete only the sub-clause. It was also pointed out in the Ruling that even if the amendment related to the removal of a word, it was held in order. The same thing was upheld in the House of Commons.

MR. E SUBRAMONIA AIYAR: I have little to add to what the Legal Remembrancer had said. I may say that an amendment which has the effect of negativing a proposition agreed upon should not be accepted. We are now dealing with only sub-clause (ii) of Section 6. The substantive section is Section 6 and that is the controlling section and nothing is made to go back on the principle accepted in that section by the House.

PRESIDENT: The point for consideration is whether the substantive provision namely Section 6 is affected. The substantive clause makes certain acts to come within the ambit of the arrangements provided for by law. The proviso comes in there as a means of interpretation of the expression "........ negligently fails to prevent............" Now, what is sought to be done is to delete that provision by way of interpretation clause, leaving the substantive provision of the section to stand. That is, the penalty clause stands while the interpretation clause is sought to be deleted. That I hold is in order.

The motion before the House is, amendment No. 6 namely,

"In clause 6, delete sub-clause (ii)."

The amendment was put to vote and carried.

SRIMATI T. NARAYANI AMMA: Sir, I demand a poll.

A poll was taken with the following result.

AYES—15.

1. Mr. Kottalil P. Abraham
2. „ S. Chattanatha Karayalar
3. „ Joseph Vithayathil
4. „ K. C. Karunakaran
5. „ T. C. Kesava Pillai
6. „ P. V. Mathai Chemparathy
7. „ R. Narayanan Namboori
8. Mr. J. E. A. Pereira
9. „ N. Ramakrishna Pillai
10. „ M. Ramiah Pillai
11. „ E. Subramonia Aiyar
12. „ N Velu Achary
13. „ P. Vivekanandam
14. „ P. S. Nilacanta Aiyar
15. „ K. R. Ramasubba Sastri

NOES—17.

1. Mr. P. C. Adichan
2. Sahib Bahadur V. Chendamiah
3. Srimati K. Devaki Antharjanam
4. Mr. E. E. Pandarathil
5. „ D. Francis
6. „ M. L. Janardana Pillai
7. „ N. John Joseph
8. „ T. T. Kesavan Sastri
9. „ S. Krishna Aiyar
10. Sahib Bahadur M. K. Mackar Pillai
11. Mr. S. Narayana Pillai
12. „ K. R. Narayanan
13. Srimati T. Narayani Amma
14. Mr. Kainikara M. Padmanabha Pillai
15. „ Codiveetil C. Ramankunju
16. „ P Sivarama Pillai
17. „ P. Narayana Pillai

NEUTRALS—14.

1. Mr. M. L. D'Cruz
2. „ C. Jebamony Nadar
3. „ K. P. Kochukora Tharakan
4. „ J. R. Harler
5. „ M. K. Nilacanta Aiyar
6. „ M Govinda Pillai
7. Dr. G. D. Nokes
8. Mr. Puthupalli S. Krishna Pillai
9. „ G. B. E. Truscott
10. „ M. Ramachandra Rao
11. „ A. Gopala Menon
12. „ M. P. Joseph
13. „ M. K. Gopala Pillai
14. „ G. S. Abdul Karim

The amendment was declared lost, 15 for 17 against and 14 neutrals.

The motion that clause 6 stands part of the Bill was then put and carried.

MR. K. R. RAMASUBBA SASTRI: Sir, I move the following:

"In clause 6, add the following as sub-clause (iii).
The Government reserve to themselves the power to exclude or exempt from the operation of this Bill special communities and persons and the fact of such exemption will be published in the Government Gazette."

PRESIDENT: The amendment as drafted is defective. Before the amendmen s are tabled it would be useful that formal changes are made in consultation with the member in charge of the Bill.

MR. PUTHUPALLI S. KRISHNA PILLAI: The amendment as it stands cannot be accepted.

PRESIDENT: The amendment may be modified and then moved after lunch.

The House adjourned for lunch at 12·57 p. m. and met again at 2 p. m. with the President in the Chair.

MR. PUTHUPALLI S. KRISHNA PILLAI: I had a discussion with Mr. Ramasubba Sastri about the amendment he suggested to clause 6 and he has agreed that he would support Mr. E. Subramonia Aiyar's amendment in respect of clause 11 both being the same.

SRIMATI T. NARAYANI AMMA: In view of the volume of non-official business that has to be disposed of, Sir, I have the honour to request you to allot one more non-official day for the consideration of the Bill.

SRIMATI K. DEVAKI ANTHARJANAM (*Nominated*): I second it.

PRESIDENT: The honourable member wants one more non-official day. In coming to a decision I shall be largely guided by the sense of the House. What is the general idea ?

MR. K. NARAYANAPERUMAL NADAR: Before putting the motion to the vote I wish to bring to the notice of the House that during the last session and this session also no day was allowed for resolutions.

PRESIDENT: There is not such a day as a day for resolutions. There is a non-official day. There is no separate day for non-official resolutions in any legislature.

The motion for allotting one day more for the consideration of the Bill was put and carried.

Clause 7.

SRIMATI T. NARAYANI AMMA: I move that in clause 7, substitute the words "Magistrate of the First Class" for the words "District Magistrate." According to the Bill, as revised by the Select Committee, the District Magistrate can take cognisance of offences under this Bill only upon a complaint made to it. The District Magistrate is a touring officer and when he is out of the station offences under this Act cannot be taken cognisance of and tried. It is to obviate this difficulty that I am proposing this amendment. For purposes mentioned in the subsequent clauses also it is necessary that the Court concerned should be that of the First Class Magistrate. So I move this amendment.

MR S. KRISHNA AIYAR: I second the motion.

[At this stage, the President left the Hall and the Deputy President took the Chair.]

MR. K. R. RAMASUBBA SASTRI: I oppose the amendment. I would like to know whether my amendment to clause 6 in the list will be proceeded with after this is over. I now find that no mention at all of that amendment is made and we are proceeding to clause 7. I want to know what has become of that, whether it is suspended for the present or whether we will be discussing it later on. I would like to know how the business is to be arranged.

MR. PUTHUPALLI S. KRISHNA PILLAI: I suggested that the member's amendment to clause 6 is the same as Mr. E. Subramonia Aiyar's amendment to clause 11 and the honourablemember has agreed that he may say what he has to say when that amendment is taken up. The amendment itself is not in order. If he were to move that amendment I would have to oppose it. That was what was agreed to.

MR. K. R. RAMASUBBA SASTRI: I was not aware of that. If that is so I may take it that I may be allowed to speak on my amendment, when the amendment suggested by Mr. E. Subramonia Aiyar to clause 11 is taken up, and all these may be considered together.

MR. S. KRISHNA AIYAR: Sir, I rise to a point of order. There is already a motion which has been seconded.

MR. T. C. KESAVA PILLAI: I rise to a point of order. The honourable member Mr. M. Sivathanu Pillai is not in his place. He is present in the Hall and is in another place.

DEPUTY PRESIDENT: Where is that member?

MR. T. C. KESAVA PILLAI: He is sitting in another seat in the Hall.

DEPUTY PRESIDENT: His presence elsewhere is not to be recognised. That is not a point of order.

Do you think, Mr. Sastri, that if this clause is considered your motion will be out of order? Is that your point?

MR. K. R. RAMASUBBA SASTRI: I want only to know whether my amendment will be allowed to be discussed after the consideration of this amendment.

DEPUTY PRESIDENT: That amendment will be allowed to be moved in the proper time. Now the other amendment is before the House.

MR. K R. RAMASUBBA SASTRI: I oppose the amendment that the trial should be not by the District Magistrate but by the First Class Magistrate. The reason given for that substitution is that as the District Magistrate may go out on circuit, the trial of the cases coming under the cognisance of this Bill may be very much delayed and therefore in the interest of the speedy trial of cases it is necessary that the power should be entrusted to the First Class Magistrate. It is a very unhappy feature of this Bill that all natural presumptions of law and all principles of natural equity and justice are sought to be violated by introducing new and noval principles in favour of the speedy passing of the Bill. Just now we have listened to the argument that the presumption of law which is that the man or woman should be presumed to be innocent until they are proved to be guilty is to be reversd for purposes of offences under this Bill. It is one of the fundamental principles of jurisprudence. It is not right that a person should be punished for the so called wilful neglect in not preventing the marriage of his children. All the members have pointed out the various difficulties that stand in the way of a parent. That, I believe, is the case in most of the Brahmin families. In such cases we have to see whether a Brahmin parent is to be running after every child whom he has sent for the purposs of education to see that the boy does not go out of his head by circumstances beyond the control of the boy himself and his father. And we are all in one sense creatures of environments. A boy, when he goes to school finds a new impulse of sex and creed. It is not a new principle that every body must subordinate his interests to that of the mass dictates, but he must also have a will to act according to his religious and healthy environments and the duty that he owes to his parents.

MR. M. SIVATHANU PILLAI: (*Tovala* cum *Agastisvaram*): I rise to a point of order. I find official benches disposing of files. I would like to know whether it is permissible.

DEPUTY PRESIDENT: Honourable members are not expected to go through files in the Houses.

MR. K. R. RAMASUBBA SASTRI: What I want to emphasise in this connection is that if possible the tribunal that functions under this Bill ought to be of the highest possible quality and quantity because we find that under this Bill new provisions are being put in and heavy penalties up to 10 years' imprisonment are given. Then all the serious objections that a man will bring to prove his innocence will be denied.

MR. C. JEBAMONY NADAR: Clause 7 if amended would read that "not withstanding anything contained in Section 170 of the Code of Criminal Procedure, no Court other than that of a Magistrate of the First Class shall take cognizance of, or try, any offence under this Regulation". That means the District Magistrate will have no power to try the case and this goes against the provisions of the Criminal Procedure Code. How can we reconcile that fact?

MR. K. R. RAMASUBBA SASTRI I think the point raised by the learned member also deserves serious consideration at the hands of this House. The legislation that we enact now must not go against the provisions of the Criminal Procedure Code.

MR. C. JEBAMONY NADAR: I also suggest that the substitution of the words "of a Magistrate" in the place of the present amendment.

MR. K. R. RAMASUBBA SASTRI: These District Magistrate and the Magistrates of the First Class have, I believe. in the Criminal Procedure Code the same powers, only the District Magistrate is generally a more experienced person, being one who comes into possession of power after a good deal of experience in life. As such, he is expected to view these matters with a broader outlook than a mere first class Magistrate. Not only that, under the Criminal Procedure Code, we must remember that even Second Class Magistrates are invested with powers of First Class Magistrates at times. It will then be simply easy to put any man in charge of these powers, and being such a revolutionary provision of law, affecting the rights of the community like the Brahmins, I would bring to the notice of this House that this amendment that the First Class Magistrate could try the case instead of the District Magistrate, should not be allowed. Only the District Magistrate should try the case. It is unnecessary that these cases should be tried at all, that is our view, because, after all, these are social offences not bringing into opprobium any point on which the community or the morale of any community can be said to be affected. A man, who, in order to secure a husband for his girl proposes to sanction an engagement, and that is all according to our view what the Brahmins sacremental marriage mean, need not be penalised by law. In this respect, I would like to point out that so long as certain principles are not accepted by all communities, we might try to walk in the old groove instead of attempting to jump into new grooves simply because there is an anxiety to reform or enter into social and political life. The point I am at is that we should provide for the spritual welfare of our children, I mean the members of the Brahmin community which alone I specially bring to the sympathetic consideration of this House, by leading the boys and girls to a religious school and ceremony called *Upanayanam* and the same samskhara being performed for the girls at about the same age. The *upanayanam* of a boy and the marriage of a girl are in Hindu religion, the same *samskara*. I really do not see how it is said that boys and girls should be differentiated so far as this particular *samskara* is concerned. I am now dealing with the religious aspect of this question, because it materially affects us,

MR. PUTHUPALLY S. KRISHNA PILLAI: Is there any religious principle involved in the question whether it ought to be the District or the First Class Magistrate who ought to try the case.

MR. K. R. RAMASUBBA SASTRI: I believe so, because, if it is a new officer who comes to try the case, he will brush away all religious considerations. If on the other hand, the officer who tries the case is a family man, who might have children of his own, and who might have experience of the difficulty of getting brides and bridegrooms for his children, and if such a man is empowered with the trial of the case we will have more sympathetic consideration. If I am wrong in the view I have taken, I stand subject to correction. The main point is whether a man, simply because he believes in his religion, should be penalised. Because somebody thought that this sacramental marriage of the Brahmin involves immediate possession and immediate violence it is not right to penalise them. I say all these ideas have to vanish. We have therefore, to consider the point whether after all, it is a religious subject or not. If I am following the dictates of my conscience in saying that my girl should be provided with a husband, I simply follow the religion. I do not want to disobey the law. My child shall be at the disposal of the State. I shall see that violence of person is not committed or perpetrated before the girl attains the age of fourteen. If I appeal to the older officer in this way, I think, he will respond sympathetically. He will say "My dear Sir, you are right". This is only registry of the marriage and I ask why should the registry be disallowed.

MR. M. P. JOSEPH: Is there any distinction in the interpretation of the section between a senior officer and a junior one?

MR. K. R. RAMASUBBA SASTRI: That is just the distinction that I am always making. I think I am appealing to the sympathy of the elder member. But the junior man, like the scorpion is only anxiou, to strike the first person who comes before him. On the other hand, I can appeal to the sympathy of the old man, who knows the difficulties of family life, who is not perhaps a bachelor or an ascetic or anything of the kind.

DEPUTY PRESIDENT: Suppose the District Magistrate is an young officer.

MR. K. R. RAMASUBBA SASTRI: Generally young officers are not given such powers. Generally a person becomes a District Magistrate only after he passes his fiftieth year or just one or two years before retirement. They are then chucked out.

MR. C. JEBAMONY NADAR: Does the duty depend upon the age of the officer?

MR. K. R. RAMASUBBA SASTRI: Yes to a very great extent it depends upon the experience, the practical wisdom and the family life of the officer. I shall take the case of an examiner who has a large number of children who appear in various classes in schools from E. S. L. C. upto the B. A. I think he will be more sympathetic than a mere bachelor.

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who has an M. A. Degree. With such a man even a Ramachandra Rao might fail. As a matter of fact, it happened once that we were coming back from Madras after writing the B. A. Degree examination. Mr. Hanumantha Rao, a very great mathematician with unfortunately no children was also travelling along with us. We have known him as one of the Board of Examiners, but none of us could identify him. So even while we spoke about him no one knew that he was overhearing us. And we spoke such horrible things about him; that he did not want to test the students but wanted to display his supreme intelligence, that he simply wanted to show that he was a great man and that if he had a son he would pluck in every class a number of years. His face grew smaller and when we said that he would not live long he actually burst fourth in fury thus disclosing his identity to our great dismay. I am simply giving this anecdote as a practical illustration that a new magistrate who simply gets the First Class Magistrate's powers is not likely to recognise the various difficulties which ought to be considered in a trial of this kind. I have pointed just now that the prior amendment about presumption was an innocuous amendment. It did not do anybody any harm. Yet by 17 votes to 15, we have lost and now, where is the guarantee that we will be sympathetically dealt with by the first class magistrate or with the second class magistrate invested with the first class powers. He will not take into consideration anything and the maximum punishment will be given. There are two points; the conviction and the sentence. At least conviction may be for a technical offence and the sentence must be very light. In all these points, the District Magistrate with his experience will be more lenient and sympathetic than the first class magistrate. Again, I would say "why not leave this as it is, instead of pressing it so hard against persons who are simply guilty of a technical offence." This is after all a technical offence in persons who want to give their children in marriage. It is so, because he is obliged to do so by a paramount religious duty.

When I say that I am performing a religious duty I expect that it will be exempted from the penalty of the law. In this connection I would like to bring to the notice of the House that there are some matters in which all Political and Social bodies can act according to the law like the Law of Property and Person and though with reference to social matters also the House of Legislature has ample jurisdiction yet on questions of religious matters we are really the slaves of not only the priests but also of the equally authoratative pronouncements of the scriptures, *Vedas* and *Smritis* both of which we are bound to obey.

DEPUTY PRESIDENT: The honourable member's observation should be strictly relevant to the amendment.

MR. K. R. RAMASUBBA SASTRI: Sir, I am within the scope of the amendment.

DEPUTY PRESIDENT: The point to be considered here is whether the District Magistrate or a First Class Magistrate is to be invested with the jurisdiction.

MR. K. R. RAMASUBBA SASTRI: Sir, I bow to the ruling of the Chair. But I was telling the House whether it is not a fact, a fact which must be taken into consideration, that the offence is related to a sacrament and as such it ought to be tried by a superior and experienced officer like a District Magistrate. I was also saying in developing that argument that the sacrament is a religious duty. Nothing more. After all Sir, this is a private bill in which our cherished traditional and theological views are all being brushed aside. At least we must be heard before we are punished. That is all I have to submit Sir. So I would like to point out that however our cherished feelings and emotions are being slurred we would protest that every portion of this measure is capable of affecting our theological and religious feelings.

DEPUTY PRESIDENT: This is not an appropriate occasion for the honourable member to engage himself in theological airings.

MR. K. R. RAMASUBBA SASTRI: Even if I am irrelevant to that extent I crave the indulgence of the chair. Sir the very fact that I have acted according to the precepts of my religion is punishable under this Act. On that point I submit that I am entitled to a hearing.

DEPUTY PRESIDENT: This is absolutely irrelevant to the question at issue.

MR. K. R. RAMASUBBA SASTRI: If you Sir, rule it out as irrelevant I have got nothing more to say on this. Sir, what I am submitting is that a man is not bound to obey the law of the land if it contravenes the precepts of his religion. In this connection I may refer to a famous dictum of Abraham Lincoln.

DEPUTY PRESIDENT: The dictum of Abraham Lincoln is not relevant here.

MR. K. R. RAMASUBBA SASTRI: Sir, if it is irrelevant I will simply sit down.

DEPUTY PRESIDENT: All right go on.

MR. K. R. RAMASUBBA SASTRI: Sir, I will only just read a few sentences from a famous pronouncement by Abraham Lincoln, *i. e.*,

> "I am not bound to win but I am bound to be true—I am not bound to succeed but I am bound to live up to what life I have—I must stand with anybody who stands right, stand with him while he is right and part with him when he goes wrong."

Therefore Sir, all Hindus especially the Brahmins who are the priests of the community have got strong feelings in this matter. I will deal at length with the provisions of this Bill later on.

MR. E. SUBRAMONIA AIYAR: Sir, I fail to see why there should be this amendment in this Section of the Bill. Apart from the question that the District Magistrate is a more competent man or a woman—because hereafter we are sure that we will have women District Maigstrates—than a Magistrate of the first class, what is the substantial reason for introducing this amendment unless it be that you find it in the British Indian Act? Are we to be led by what is found elsewere? The Select Committee did not think the amendment necessary.

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It appears to me that we are being misled by the term 'offence' and 'Criminal Law'. Offences of a grave nature under the Penal Code are triable by First Class Magistrates. But the act restrained by this Bill is certainly not one wishing moral turpitude. The only aspect of the matter is that if this Legislation has any shred of reason it can be supported only in the view that it is a desirable and necessary piece of social reform to the effect that certain practices prevalent in a community must be restrained so that the society may develop on proper lines. And so Sir, it is not a piece of Penal Legislation. It is a legislation for reforming a community. It is upon that basis it proceeds.

Looking at the offences, Section 3 says that the offence is punishable with a fine which may extend to Rs. 1000. Section 4 says that the offence is punishable with one month's imprisonment or with a fine of Rs. 1000. Section 5 says that the offence is punishable by one month's imprisonment or with a fine of Rs. 1000 or more. As a matter of fact, if we consider it as an ordinary criminal offence, it comes under the Penal Code, and then why not the Second Class Magistrate try the cases? So it is not upon that basis that provisions are made in this Bill. In fact the idea of the Legislature and the Select Committee which sat over the Bill seems to have been that a special tribunal must be created for taking cognisance of this special class of cases of offences. This idea is based not on the ground of ethical and religious sentiments but on grounds of a social policy. Therefore it was decided, and rightly so, to let the matter go before a person, a presiding officer of superior status. Certainly at this time of the day whatever theoretical arguments are advanced nobody is going to contend that there are no gradations of status among officers if not among men. A District Magistrate is superior to a Magistrate of the first lass and we take it therefore that persons occupying the positions of District Magistrates are persons of superior ability fit to try such cases. I am not going to concede that age and seniority are not factors which will have their value in the capacity of a person who is called upon by statute to try and punish people for offences. Age means experience, experience means wisdom, and wisdom means discrimination. So if you look to the principle of the Act the idea seems to be that as these matters are matters affecting and touching the vital points and customs relating to a particular commuuity they may come up for consideration before a superior tribunal and not to be treated as ordinary class of offences. Let there be a more dignified method adopted in this matter so that offenders in this case may not be placed on the dock with persons who are accused of theft, murder or forgery. Though the presiding officer is called a Magistrate and though the court is called a criminal court the idea seems to be to have as little of the criminal atmosphere about it. I would very much like to see that offences in this case are tried by a Civil Tribunal treating the offence as Penal. Now there is another aspect of the matter.

The trend of modern opinion in the case of Criminal law is that people have begun to dispute the utility of punishments, even of criminals for their crimes. Imprisonment and all the rest of it, criminologists now say, are not the proper remedy for crimes which are a social evil. Modern criminal jurisprudence—my friend the Police Commissioner may not agree with me—tends towards the view that criminals are unfortunate people, defectives, insane people, who have to be cured of their mental defects.

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: On a point of order, Sir, Mr. Sivathanu Pillai is carrying on conversation with some one else when one honorable member is addressing the House.

MR. E. SUBRAMONIA AIYAR: These are days, Sir, when criminologists of experience are questioning the utility of punishments in the matter of prevention of crimes. The trend of modern opinion is towards psychotherapeutics.

MR. M. P. JOSEPH: Is the honorable member speaking on the amendment, Sir?

MR. E. SUBRAMONIA AIYAR: I am; it is a matter for regret that such a question should have come from my learned friend Mr. M. P. Joseph. I am sure, if he had been carefully listening to my address, he would not have put this question.

I am pointing out that this, enactment should not be treated as a purely criminal measure. If the offence of child marriage had been one of a purely criminal nature, like theft for instance certainly, I would have argued that Magistrates of the second and third class could try it. I am attempting to show how child marriage is not a criminal offence, and how therefore persons charged with having been parties to a child marriage should be tried by Magistrates of a superior status. I was submitting how, even in regard to purely criminal offences, the trend of modern jurisprudence is to treat the offenders as imbeciles or defectives, not to punish them but to try and cure them of their mental derangement.

Therefore, Sir, what I want the House to consider is that, in the case of child marriage which is not after all a criminal offence, the offenders deserve to be tried by a special tribunal of superior status so that even respectable persons may be tried. Certainly persons who seem to differ from the supporters of this Bill deserve to be treated well by the Magistrates who are to try these cases. I may just inform the House of a recent case which happened in Rajamundry. There, an old gentleman married his daughter's daughter to his adopted son; it was a child marriage under the British Indian Child Marriage Restraint act. The old man was about to croak, and he thought that in the interests of his family the marriage must be performed in his life time even at the risk of a deviation from law. The old man, his son in-law and others were prosecuted for the offence of child marriag

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The old man said openly in Court "I am very old and about to die; the punishment you may award is therefore of little consequence to me, because, in a few days, I shall be in a place where all your punishments would be absolutely ineffective. So long as I happen to be in this world, I am not able to forget my attachment to the various members of my family; and at this stage of my life, if I do not unite these two youngsters together in happy wedlock, I do not know what will happen to them after I die. That is my motive in bringing about this alliance." The Magistrate, who was a man of judicial experience, took into consideration all these facts and awarded very light punishment. Such cases may arise every where.

MR. K. R. RAMASUBBA SASTRI: I beg to bring to the notice of the honourable member that even in our High Court.. ....

DEPUTY PRESIDENT: You cannot make a statement now.

MR. E. SUBRAMONIA AIYAR Apart from all these considerations, Sir, a reading of this Bill will convince everybody that the idea of the measure is to treat child marriage on a footing entirely different from offences forbidden by the Penal Code. It is therefore only just and fair that these offenders are tried by superior Magistrates like District Magistrates.

It has been argued, Sir, that District Magitrates would have to be touring the districts and would not therefore have the time to try these cases. How many complaints, I ask, are there going to be under this Bill. These are days of statistics some how people imagine that numbers ought to lead to certain definite conclusions; on another occassion, if necessity arises, I shall say more about the utility of statistics. Any how, Sir, let us look into figures in this matter. How many are there in Travancore who believe in child marriage? How many child marriages are there in Travancore? And, after this Bill becomes law, how many prosecutions are there going to be in a year? The reason why we have this Bill here is quite clear. Because there is a similar legislation in British India, we are attempting to have one here also. If British Indians are black, we should also be black; if they are brown, we shall also be brown. So far as my knowledge goes, the cases of child marriage in Travancore are very few; and cases which are likely to go to courts will be very very few indeed. Therefore, it cannot be argued that the District Magistrates would not find time to deal with these cases. And, if later on it is found that they are not able to handle these cases also, there is nothing to prevent this provision being suitably amended.

Sir, if it is the idea of my friends that the conduct of these cases before the District Magistrates would be more difficult than before the lower Magistrates, then that is the very reason why I want these cases to be tried by District Magistrates alone. After all, the idea is to prevent child marriages; it is more or less a kind of educative measure and not a penal one. I do not think anybody is going to walk from door to door, from house to house, find out cases of child marriages and launch

prosecutions. Sir, we have to bear in mind the cases of poor people in the mofussil parts. This measure is sure to give a handle to mischievous people to harass and to threaten innocent people in country parts with prosecutions under this measure. Therefore, Sir, even if there are going to be loop holes in this Bill, which is after all only an experimental measure, nothing would be lost; all defects can be rectified later. That is the aspect which I would like to emphasise. Nothing is going to be lost by the prosecution being made some what difficult, or rather less easy; on the other hand, there is much to be gained by that, since even respectable people are sometimes likely to be brought before the Magistrates, under this Bill.

Now, Sir, how many District Magistrates are there in Travancore? We have about four or five; one in Trivandrum, another in Quilon, a third in Kottayam, and there is also the Devicolam Commissioner.

For the whole of Travancore we have only got these Magistrates. If a child marriage takes place in Paravur, the prosecution will have to be brought before the District Magistrate of Kottayam. Whatever be the law, however strongly or effectively you pass the law I am sure that for sometimes there will be a great reluctance on the part of people to come as informers in such cases. Unless the law compels a person to disclose the information of which he is in possession, in 99 cases out of 100, my view is, very few persons will take up the role of prosecutors. Honestly I may tell you, Sir, that if after the passing of these regulations a child marriage is going to take place just near my house whatever may be my views with respect to the disadvantages of a child marriage and the necessity for this legislation, even if I feel convinced that child marriage is a social evil and the sooner it is got rid of, the better, I am not going to take up the roll of a prosecutor. This mentality of mind is not peculiar only to me. I am sure it is common to many people. Therefore if the prosecution is brought before the District Magistrate, there will be the dirth of informers and secondly there will be the difficulty of placing the matter before the District Magistrate and the e fore prosecutions may be rare I do not want to keep these possibilitis from the notice of the House. But if the matter could be taken before a first Class Magistrate, it is quite possible that there is more facility for prosecution. In the case of a new law of this description, the question is to what length are we to go. As I said the other day, there is the Juveniles' Smoking Regulation. Are not the juveniles smoking in spite of the regulation? Can we say that we have not seen any juvenile smoking after the passing the Regulation, but how many prosecutions have taken place till now? There is nothing wrong in these matters. These are not offences involving moral turpitude. If a child-marriage takes place there is no duty cast upon you to bring it before a Magistrate and the heavens are not going to come down on you because you have not brought it before a Magistrate. Being an experimental measure, being something which is directed first against a particular community, even if there are certain lapses, we have to see the reaction of the community to this piece of legislation.

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Further we should not create a profession for the unemployed. I dare say, Sir, it will not be long before an association of informers is formed of the unemployed people, because it is an easy matter They will take the part of informers and they will be hailed as reformers. Even if a marriage has taken place and it was not a child marriage, these people can go and put in a complaint. So, much facility should not be given for prosecution. We should weigh the advantages and disadvantages in the matter of giving facility for prosecution. If any person has got a grudge against me and he wants to spite, certainly action may be taken against me at his instance even if the marriage performed in my house is not a child marriage and once the prosecution has been launched against me, certainly I must appear before the Disrtict Magistrate and probably engage a lawyer to defend me. A prosecution before a District Magistrate is attended with certain difficulties; even then, it is better that such matters do come before an officer of superior status, So, it is this aspect of the matter which makes me question the necessity of this amendment. From a purely theoritical point of view it is indifferent to me whether the offence is tried by a District Magistrate or a Magistrate of the First Class. But if you take the background of this procedure, if you pay heed to the ideas which go for the passing of this law, then you will see, as I have said, that it is not an ordinary criminal law, that you should not treat it in that category and that you should give it a higher status and a better atmosphere. What harm is there in the District Magistrate trying it? As I said, if later on it is found that there is a plethora of cases on the file of the District Magistrates and that justice is suffering' certainly we are here, and if we are not here, others will be herea in our places, and certainly they will be equally interested if not more, they will be equally zealous if not more, in seeing that every community in Travancore has got a normal healthy development. Sir, with these words, I oppose the amendment.

MR. C. JEBAMONY NADAR: Sir, I am inclined to support the amendment in spite of the learned speeches of my honourable friends, to the contrary. People like myself who have not been judges always think that judges have what is called "a judicial frame of mind,"

MR. T. C. KESAVA PILLAI: May I know whether the honourable member was not a Panchayat Court Judge?

MR. C. JEBAMONY NADAR: I meant a judge in the technical sense. Let me say then that we always think that judges possess a judicial frame of mind. If any officer is wanting in such a frame of mind, certainly he is not fit for a judge's place. We take it also that judges are not influenced by any extra judicial circumstances, by their having children, grand-children, great-grand-children, by their family and such things, as hinted by one member. By law, at any event, these matters should not be taken into consideration by a judge. Hence the arguments directed against a First Class Magistrate on these grounds are unacceptable.

MR. E. SUBRAMONIA AIYAR : Is the honourable member aware that there are decisions of judges which will always be coloured by their views upon social life, ethics and the rest of it.

MR. C. JEBAMONY NADAR : If so, it shows that our judicial system is bad and that we must change it. Whatever that may be, we must take it that all classes of Magistrates are gentlemen who will not be influenced by these circumstances. Hence in the matter under discussion I do not see any reason why there should be such vehement opposition against First Class Magistrates in preference to District Magistrates who by their mere grade are not to be credited with superior talents. As the criminal procedure code stands, the First Class Magistrate is of the highest class having original jurisdiction to try criminal cases of various kinds. He is empowered by existing penal law to try offences relating to marriage and religion. This is also a case of marriage.

MR. P. S. NILAKANTA AIYAR : Is the honourable member aware that offiences of bigamy are being tried only by the Sessions Court and not even by District Magistrate ?

MR. C. JEBAMONY NADAR : I stand corrected to that extent. Let me say then that most of the offences are triable by a First Class Magistrate. So, in a simple matter like this I believe that a First Class Magistrate should be and would be competent to try. Under the Penal Code, he can pass a sentence of two years imprisonment, but here it is only one month. Why then suspect him ? It is a simple matter which could easily be ascertained as the factum of marriage cannot be a complicated question of fact. In India the amendment has been made evidently because that was found necessary. The Saradha Act there was in force for some time without the amendment. Then it was found that the change was necessary. Thus it is the lesson of experience in the adjacent territory. Why Can't we accept it ? Very often, we do follow the precedents in British India and other countries. Why should we depart in this particular case ? When it does not suit a lawyer he might say foreign authorities are not binding. But a legislature is not to be one-sided.

Again, unless this amendment is supported, I think we are lowering the status of our District Magistrates, because in British India, officers of the status of First Class Magistrates have been found to be competent to try such offences. Do we mean that the status of our District Magistrates is equal only to that of a First Class Magistrate in British India? Correct decision is not the monopoly of any grade of officers. It depends upon individual merits rather than their grade. Against the decision of our First Class Magistrate appeals lie to the Sessions Court. Such matters then go up to the High Court. The High Court sets aside the order of the Sessions Court and restores that of the First Class Magistrate. Does that show the Sessions Judges have a status inferior to that of the Magistrate ? The Legislature has already decided against child marriage, by accepting the general principle of the Bill penalising

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certain acts. It is therefore necessary that every facility is afforded to the public to bring before courts complaints of any offence if and when committed, against the provisions of the Bill. If the District Magistrate alone is to try this offence there would be practical difficulties. Take the case of a child marriage performed in Aramboly, sixty miles away from the Headquarters of the Trivandrum District Magistrate. One may not be inclined to come all the distance to Trivandrum to launch a prosecution. Again, consider the cost of bringing, say twenty or thirty witnesses to Trivandrum from Aramboly. These would be real difficulties which would discourage complaints. And thus an offence committed against a special enactment passed by the legislature may go unnoticed and unpunished. Once we pass a law, we should see that it is respected by all and if anybody infringes any provision, proper steps should be taken and for this purpose we should provide for every legitimate convenience, else, the law might become a dead letter. That being so, I would submit that if a matter like this is to be dealt with by a District Magistrate only, there is the possibility of many deliberate and wilful offenders defying the law with impunity which may be an inducement to many others to set at naught all our labours on the floor of this House. It is therefore necessary to invest our first First Class Magistrates with jurisdiction to try offence under this enactment. As a *via media* course and as a matter of compromise I would even suggest to retain the words "District Magistrate" and add "or a Magistrate of the First Class". But however, as it is a matter for the honourable mover I would stop at that. Even as the amendment stands, I see no reason to oppose it.

It was said that the Select Committee did not suggest this amendment because they did not think it proper to accept the change in British India. I do not see the force of this argument also. If the Select Committee did not want the first class Magistrate to exercise jurisdiction in this matter they would not have agreed to clause 9. For under section 9 an enquiry comes in and that by a Magistrate of the First Class. The reason why the Select Committee retain the expression "District Magistrate" is perhaps due to the special power of enquiry conferred on a First Class Magistrate by Section 9. It is very seldom that a District Magistrate himself tries original cases. He directs his subordinate to do so even when he is directly approached with complaints. Further as the section contemplates a regular trial better justice could be expected of a Magistrate of the first class who is mostly a trial Magistrate, actually and regularly doing that business.

MR. E. SUBRAMONIA AIYAR: Is it the member's view that a First Class Magistrate is competent to try the offences involved in section 9?

MR. C. JEBAMONY NADAR: It is enquiry, Sir. I mean that if for enquiry a First Class Magistrate is trusted, why not the same officer be empowered to try? Of course there is difference between an enquiry and a trial. In a trial the parties are present in court and there is the right of cross examination. Enquiry in section 9 does not include these.

Thus that a first class Magistrate has to play a prominent part in dealing with offences under the Bill even as it stands, is un-disputable.

MR. K. R. RAMASUBBA SASTRI : Is it not a fact that though a case is sent for enquiry by a District Magistrate it is again committed to a court of sessions to be tried again?

MR. C. JEBAMONY NADAR : Yes, if it is a case of preliminary enquiry in a sessions case and not in other enquiries.

MR. K. R. RAMASUBBA SASTRI : Therefore, does it not show that an enquiry cannot be held in what is called a blind alley?

MR. C. JEBAMONY NADAR : My point is that the enquiry in section 9 is similar to the enquiry under section 180 Criminal Procedure code and not "the preliminary enquiry". Most of our First Class Magistrates are also exercising appellate jurisdiction. We thus trust them to deal with matters of serious consequences. In a case of child marriage no religious question could arise. So far as custom is concerned it would be foreign to the enquiry. It is only a question of reading and understanding the plain section in this Bill which is clear enough. It is clear therefore that for the purpose of this section, a Magistrate of the First Class can have no difficulty. Again the District Magistrate is an executive officer, who has to be in camp often. If it be the Trivandrum District Magistrate, on one day he will be at Cape, another day at Thuckalay, and a third day at Attingal and so forth. The newly married boy and girl will have to appear in court on every day of trial. Why exhibit these poor beings throughout the Division when there is a never moving first class court. The same fate awaits the parties and witnesses as well. Let us avoid all these unnecessary difficulties. My point, therefore, is that the District Magistrate should not exclusively be invested with the power to try cases arising under this section. Hence, I support the amendment.

MR. T. C. KESAVA PILLAI : In opposing the motion, I have to say one word. First Class Magistrates are Stationary Magistrates. District Magistrates are moving Magistrates and therefore many cases do not enter their file. Under various Acts, they have got certain duties to perform. In the case of child marriages, cases should be tried by experienced officers only. In marriage disputes, it may be necessary that the opinion of many Sastris may be required. They have to be put as witnesses to incidents which might have occurred some months back. No documentary evidence is possible. Questions of fact have to be dealt with. Such things should be dealt with by responsible and experienced Magistrates only. Moreover, if the provision says that a District Magistrate shall deal with the case, it is open to him to send that case for trial by a Magistrate of the First Class. Further, District Magistrates have to go on camps during *jamabandy* work. They take place on appointed days. No difficulty is caused to trial of cases on that score. For all these reasons, it is better that the cases arising in child marriage are tried by District Magistrates only.

MR. P. S. NILAKANTA AIYAR: I oppose the amendment. Mr. C. Jebamony Nadar stated that there is some verbal inconsistency in the clause as it is. Section 7 deals with jurisdiction under this Act. One of the important offences newly created now should not be left in the hands of First Class Magistrates for trial. The necesstiy for this cannot be denied.

In British India, we have got only one or two Magistrates having First Class powers in each district. In the Tinnevelly District there are only two First Class Magistrates, called Sub-Divisional Magistrates, in Tuticorin and Sermadevi. Here in Travancore there are comparatively many First Class Magistrates. The only question is whether they are men of sufficient experience, to try these new cases. It cannot be said that all these First Class Magistrates are experienced men capable of trying such cases. We want experienced men who will be able to appreciate the difficulties of the parents. As pointed out by the speaker in deciding the quantum of punishment, many circumstances should weigh with them. In Travancore we have new recruits among the First Class Magistrates, inexperienced and unsympathetic men, who cannot appreciate the religious views of the parents. If we go before a Magistrate who is given First Class powers the novelty of the offence and the importance of the case may not weigh with him. He may say "the law provides such and such a sentence and so I punish him accordingly". It is only in the original court that we can generally expect leniency in the matter of sentence. These offences are to be tried for the first time in Travancore and responsible men should be posted to try such cases. The mover of the amendment said that on almost all days the District Magistrates will be out on circuit and so, will be not available to try these cases. So far as District Magistrates in Travancore are concerned, they have, no doubt, some revenue work to attend to and also *Jamabandy* work. Though they have powers invested under the Criminal Procedure Code to try cases, they do not generally exercise it. They are competent to try calendar cases. But it is only in very exceptional cases that they try such cases. Generally they are not trying any cases at all either original or appellate. Why not at least give them this work and tell them that it shall be attended to by them and none else? Although the Sarada Act was passed in 1929 in British India, if we take statistics we will find that there are not many cases instituted in British India. As a matter of fact, they are very few and far between. So, that should, more or less be the case here also. If the District Magistrates go out on circuit they should allot some days on headquarters for these cases They can attend to them when they are in headquarters or post them to places within their jurisdictions where the parties reside so that the reasons stated by the mover do not hold water. The Sarada Act has been working there for nearly ten years. They do not find any difficulty there. There is no complaint that because these powers are given to only District Magistrates people experience great difficulty,

The next reason that I would urge is, what is the nature of the offence they have to try and what are the principal consequences that would follow by the exercise of the very large discretion vested in

these Magistrates. In applying the various provisions of this Act we find that they will have to consider various aspects. Those various aspects would receive better consideration in the hands of an experienced man. For example, the question may arise as to who is the person in charge of a minor, what should be the quantum of punishment in case of each, what are the different acts which they have commited in order to bring them within the clutches of the law. These are some of the important facts to be determined by the Magistrate. These are difficulties which are not easily appreciated, especially when the offences are to be committed for the first time. It requires experienced men to appreciate these facts. Experience and s'atus go a great way in properly deciding about the liability for the offence, the nature of the punishment etc.

The mover of the bill has given notice of an amendment that an injunction may be issued if a marriage against this law is suspected to take place. We find in this world people of all kinds, honest and dishonest, innocent and mischievous. Suppose a marriage is fixed on a particular day. Any man mischievously inclimed could just apply to the Magistrate and get an injunction just the previous day or even a few hours before the *muhurtam* saying that the girl has not completed the 14 years of age, though as a matter of fact she is over 14. The parent of the girl might have incurred a lot of money as expenses. The effect of such injunction will be more or less disastrous. Such wide powers are to be given to the Magistrates. It requires very careful handling. No doubt, the amendment says that notice is necessary. But we know how these notices are served. Notice may be returned saying that the man is not in the place or that he refuses to accept it. As I said before, the results of the exercise of the powers are very great. We can more or less imagine the difficulties in such cases. A marriage has been arranged. A number of invitations have been sent round. Much money has been spent for the erection of the pandal, feasting and the like. Suppose on the previous day a complaint is launched that the girl has not completed the age of 14 and the parties are not allowed to perform the marriage. Power is given to the Magistrate to stop such marriages. I think the Civil List will show that the number of First Class Magistrates is greater than the number of second class Mag'strates. It is therefore of the utmost importance that only the Magsitrates of the highest class should be allowed to try these cases, Analogous cases under bigamy are being tried only by sessions Judges.

MR. PUTHUPALLI S. KRISHNA PILLAI: May I know the maximum punishment awarded for bigamy?

MR. P. S. NILAKANTA AIYAR: The Legal Remembrancer to Government ought to know it better.

MR. PUTHUPALLI S. KRISHNA PILLAI: May I know whether cases for bigamy are tried by First Class Magistrates?

MR. P. S. NILAKANTA AIYAR: Sir, I said that there is not much difference in the importance of the cases to be tried under this Act, from other bigamy cases. It is quite different from other matrimonial cases like adultery, enticing a married woman etc. It may be that the punishment that is awarded is less on account of the novelty of the offence etc., but the question is as to who should try the case. The punishment under this Act. regulation may be light. Moreover we are not accustomed to such offences. Then again one argument which was advanced by one of my honourable friends is about the presence of the parties and the taking of statements and all that. I am not able to appreciate the difficulties raised by my honourable friend. If a man complains about an offence it is his duty to make all the necessary statements in writing or orally in that behalf. As regards the parties who contract a marriage I don't think that to take statements from them is necessary at all. Even the case may be allowed to proceed without their presence. In any case it is not an insurmountable difficulty. In a trial there are many things through trivial still great. In the course of a trial it is a matter for the discretion of the Magistrate to allow a seat to the accused. And it is only from Magistrates of the highest class that we can expect the best possible exercise of this discretion. Such courtesies cannot be expected from Junior Magistrates who are generally 30 or 35 years of age. In their eyes all offenders in the eye of the law are alike. Here it is not an offence involving moral turpitude. If at all marriages of children are contracted it is not done for the fun of it. The parents do it because of their religious conviction. In fact all possible considerations must be shown to the accused in this case. The subordinate magistrates are not able to appreciate the difference between the various offences in determining the moral turpitude involved. They are always to see that all offenders of law are placed on the dock. There is a very recent case tried by the District Magistrate here which subsequently came up before the High Court the accused was not given a seat by the District Magistrate. But in the High Court he was offered a seat. Another matter of detail is that the presiding Magistrate may wait till the seat is asked for. These things though too small would show the extent of the jurisdiction of the presiding officers and the manner in which the offenders are treated in courts.

MR. PUTHUPALLI S. KRISHNA PILLAI: Does the honourable member expect the District Magistrate to offer a seat without a seat being asked for?

MR. P. S. NILAKANTA AIYAR: The High Court definitely says that discretion in the matter can be exercised *suo motto* by the presiding officer. And that is why I say that more experienced men can better use their discretion in this matter than the ordinary junior Magistrates. Then one of my previous speakers referred to an enquiry which may be ordered by a First Class Magistrate as a check upon haphazard prosecutions. My answer is that there is nothing to prevent him from straight away trying the case. The enquiry to see whether there is a *prima facie* case, may or may not be availed of,

MR. E. SUBRAMONIA AIYAR: Does Section 9 vest a Magistrate of the First Class with a jurisdiction to try a case, to send the case to the District Magis ra'e who directed him to make an enquiry?

MR. P. S. NILAKANTA AIYAR The First class Magistrate should make enquiries and collect evidence and then send his report to the District Magistrate saying whether the offence was committed and whether the offender can be prosecuted. His duty must be just like a police officer who makes enquiry and report to his superiors. The Magistrate's work is only a sort of preliminary work before the trial proceeds and the ultimate power is to be given to the District Magistrate to try and decide the cases.

The effect of Clause 9 is rather serious. Probably there may be two opinions on the matter. As regards the burden of proof it is for the offender to produce evidence of want of negligence, in the case of a parent, etc. Before a subordinate Magistrate who is invested duly with the powers to try these cases, it will be very difficult for the accused to prove his innocence, so far as these offences are concerned The District Magistrates will and should find time to try these cases, as they are the most lightly worked officers in the State. Judging from the experience of what we saw in British India, we find that cases of this kind are very few in number. Here also the case will be similar. Before we have got any experience in the matter it is too soon to see whether the District Magistrate would find it dfficult to try these cases or not. In Travancore there are three or four District Magistrates.

[President occupied the chair at 3'58 P. M.]

MR. P. S. NILAKANTA AIYAR: Sir the point that I was stressing is whether the District Magistrate alone should try the cases or the Magistrates with First class powers should also be invested with powers to try them.

PRESIDENT: Are we still on First class Magistrates?

MR. P. S. NILAKANTA AIYAR: Yes sir, we are. Unlike in British India where we have only a very few responsible and experienced Sub-Divisional Magistrates in each District (corresponding to our First class Magistrates) we have got here more first class Magistrates, I mean as compared with the area and population of the district. Whatever that be, my submission is that offences under this provision should not be made to be tried by Magistrates lower in rank than that of a District Magistrate.

It is not likely that they would be as experienced as a District Magistrate or experienced in the manner of life generally led by the parties to enable them to appreciate the various points placed before them in respect of the acts which go to constitute the offence, and in fixing the quantum of punishment to be given in each particular case. But so far as District Magistrates are concerned, they come as District Magistrates only towards the end of their career, at a ripe and experienced age.

MR. N. NARAYANA KURUP: May I know whether the member is in order in repeating the very same argument?

MR. P. S. NILAKANTA AIYAR: What I said just now was that in British India, in a district, there are only two or three first class magistrates. I said that, here, when a magistrate is appointed he gets very soon the first class powers so that most of the magistrates have here first class powers too soon. But this is not the case in British India. I therefore say that apart from whatever view the members may take about the necessity of this legislation, and the burden of proof, the question of trial by any class of magistrates has to be decided independently of the above considerations.

SRIMATI T. NARAYANI AMMA: Sir, the honourable member Mr. Nilakanta Aiyar was saying that the Sarada Act had been working in British India for the last ten years and yet there was no necessity felt for amending this clause. For the information of the house I may point out that, this particular clause has been amended by Mr. B. Das very recently in British India and it has been passed in the Central Legislative Assembly in March 1938. This amendment stands as amendment to clause 8 in Mr. B. Das's Bill. I have got a copy of the Bill. The particular clause in question reads thus:

"In section 8 of the said Act for the words" "District Magistrate" the words "Magistrate of the First Class" shall be substituted.

Sir, my object in moving this amendment is to bring this Bill into line with the British Indian Legislation. I therefore, request the House to accept the amendment.

PRESIDENT: The motion before the House is that inClau7, s e substitute the words "Magistrate of the First Class" for the words "District Magistrate."

The motion was put to vote and declared carried.

The question whether Clause 7 stands part of the Bill was next put to vote and declared carried.

Clause 7, was added to the Bill.

Clause 8.

SRIMATI T. NARAYANI AMMA: Sir, I beg to move that Clause 8 be substituted by the following :—

"The court may take cognizance of an offence under this Regulation, either upon complaint," made or information laid before it, within one year from the dateon on which the offence is alleged to have been committd."

Sir, the Bill as revised by the Seclect Committee provides that the courts can take cognizance of an offence only upon a complaint made to the court. My amendment empowers the Magistrate to take cognizance of the offence either upon complaint made to it or upon information laid before it and a period also has been fixed with in which time such action has to be taken. In the working of the Sarada Act, it was only very rarely thatc omplaints against child marriage have been made. After the passing of Mr. B. Das's Amendment Bill we have reports of several offences being taken cognizance of by the court. This new provision mentioned in this amendment will therefore be found to be very useful. It will not lead to any harrassment either. The object of the Bill will also be greatly assisted by the amendment. I

may in this connection point out that this and the subsequent amendments that I have given notice of are based on the changes made on the Sarada Act by Mr. B. Das's Bill in March 1938. My original Bill is, as I have pointed out in the statement of objects and reasons, based on the Sarada Act and the object of Das's Act is to make the Sarada Act more effective. Those who had followed the Central Assembly Proceedings would have noted the great enthusiasm with which Mr. Das's Bill was supported there. The Government also supported the Bill and it is stated that the Bill was more a Government measure than of Mr. Das's. In fact, some of the best speeches made on the Bill were those by the Government members. It was even stated by a member of the opposition that it was the adopted child of Sir N. N. Sircar. What I wish to emphasize is how enthusiastically Mr. B. Das's Amendment Bill was supported in the Imperial Assembly. The object of my amendment is to make the Bill as effective as possible in the best interests of society. I therefore beg to move this amendment for the acceptance of the House.

SRIMATHI DEVAKI ANTHARJANAM: I second it.

MR JOSEPH VITHAYATHIL: I wish to oppose the amendment. The wording of the amendment seems to be defective. The amendment gives room for an interpretation that the court may take cognizance of the offence even if the complaint is made or information is laid after the period mentioned in the clause. Strictly speaking there is no prohibition to take cognizance of the offence even after one year. That is a defect due to the wording of the amendment. The wording of the clause as it is, makes the position clear.

There is another defect also which I should like to point out. As the section stands now, the complaint should be made within six months of the solemnisation of the marriage. There is nothing objectionable there. But if it is amended as suggested it will come to this: the time will run from the date on which the offence is alleged to have been committed and not necessarily from the date of the solemnisation of the marriage. For entertaining the complaint the court need be guided by the allegation about the date of the marriage and need not come to a decision as to the true date of the marriage. It will be better that we do not give room for any ambiguity when we shall have to interpret the section. With regard to the question of time-limit, Sir, I have nothing to say.

MR. E. SUBRAMONIA AIYAR: I oppose the amendment, because I am also the sponser of an amendment to this clause, I mean the next one. There I wanted to make the section a little more restrictive. That is, I wanted to add the words "by not less than five members of the community to which the parties to the marriage belong." I wanted to have the section like this. "No court shall take cognizance of any offence under this regulation save upon complaint made by not less than five members of the community to which the party to the marriage belongs within six months of the solemnisation of the marriage in respect of which the offence is alleged to have been committed." Now with respect to the wording of the amendment, the addition of the

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words "within six months of the solemnisation of the marriage" to the amendment would remove all apprehension. With respect to the substance of that amendment, certainly, I am powerless against the argument that modification of the law had been brought forward in British India and therefore there is every reason for bringing our law in line with it. The Select Committee had passed its report and that only makes the argument more weak. Probably, if we wait for three years more, some new form the law may take and probably I might then contend that the whole Bill might be given up. The real question in these matters is a certain amount of reconciliation between the interest which sponsored the Bill and the interest which opposed the Bill. In Travancore, at any rate, there was no enquiry or investigation by a committee or otherwise to find out the real sense of the community which will be affected by this legislation. Now, unless we feel convinced that this measure is essential for the preservation of the well being of the community to which it applies, any method by which the operation of this regulation will be restricted is, in the circumstances, I may be permitted to say, very reasonable law. If we examine the scheme of the Penal Code with respect to marital offence or offence relating to married persons, we find generally, I do not say uniformally, that the law is to be set in motion by the aggrieved party. Even in such a serious case as that of bigamy, a prosecution can be started or initiated only upon the complaint of the aggrieved party. The husband or the wife has to move the court against the husband or wife as the case may be. No doubt it may be argued that this is an offence against the marital relationship existing between two individuals, and that therefore it must be left to the option of the aggrieved individual to set the law in motion. But, when you look at the gravity of the offence you will realise that it is not merely the grievance of any particular individual but the State also is interested in the relationship of a husband with his wife, from one point of view. The second marriage is invalid under the law; therefore the consequences are very serious to the State since the children of that marriage are declared illegitimate; and also the ethical value of the institution of marriage is considerably jeopardized. However advanced we may be, however reluctant we may be to respect old traditions and old institutions, it cannot be denied that marriage is a social and ethical institution. It is therefore the duty of every State to preserve the ethical and moral value of marriage. We know that, even in such a case, for the penal law to be set in motion it is not left to any individual in the neighbourhood of the place of offence to set the law in motion; it is not left to an informer of that description to set the law in motion; it is left to either of the spouses.

Then, take the case of adultery. It is a very serious offence; still the prosecution can be initiated only by the aggrieved party. It is therefore clear that legislators in the part have taken the view that even where marital sex expression of an illegal nature is penalised, although there is a good deal of public wrong involved in the offence, the law

could be set in motion only by the parties concerned. Child marriage at all events is an offence certainly of milder description. Nobody dare suggest that child marriage would tend towards laxity of morals. there is nothing unethical behind it. Evils alleged to be flowing out of child marriage are admittedly of a different nature, early widowhood, premature delivery, weakening of the health of the off-springs of the marriage and so on. If there is any sun shine welcome feature in 20th centuary jurisprudence, it is the high value which is attached to the moral and spiritual well being of human beings rather than to their physical well being. Therefore, even assuming that child marriage is an evil for the physical well being of the people, even granting for argument's sake all the hundred points in favour of the bill, certainly, nobody dare stand up and say that child marriage is, morally and ethically, bad and that it would lead to laxity of morals or absence of purity in marital life. It is clear that this Bill has been brought in for the protection of the physical needs of the people. Therefore, when there is no moral turpitude involved in the offence, why should there be this anxiety to see that the law is administered with all relentless vigour? Why should people roam about merely to find out whether there are child marriages conducted or not. It is common knowledge, that, in spite of the provisions of the Penal Code, theft, mischief and even murders are being committed, although the Police and the Magistracy are very vigilant. I should not be misunderstood to suggest by this argument that, when a law is made, I am arguing for loop holes to be provided for in it. But what I am submitting is that, in the case of this enactment alone, some how, an unusual zeal and enthusiasm, great over-anxiety to make the provisions too very severe, is apparent. It is that that I am now arguing against. I too would be very glad if by a wave of the magic wand of the legislature, the country would be rid of its evils. There is no doubt that to some extent we may succeed in placing restraints upon persons who respect the sanctions of society. But a law like this will have absolutely no effect on persons who have no status or position to maintain. But to say that such a precious heritage from British India as this Bill seems to be must be so well preserved that there should not be even the remotest chance of the least important provision of the Bill being slightly deviated from by even the most lawless member of society. is a proposition which, I submit, makes me tremble. After all I ask why should we have this heritage from British India. In the original section there, it was laid down that the prosecution would lie on complaint by a certain person. My own idea in the matter I have formulated as an amendment which I am going to move. It says that a prosecution should be started only upon a complaint made by five persons belonging to the community to which the parties to the marriage belong. That, I say, is the real test to gauge the sense of the community in regard to this measure. That will show how many out of the 50,000 Brahmins in the State who do not want this Bill really want this measure. What little public opinion there is in support of the Bill is not real public opinion; it is all engineered

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from behind. If all the Brahmins in the State, if all the *Makkathayees* in Travancore, are really anxious to have this reform, I ask, what is the difficulty for five honest people to come forward and demand a prosecution of the person who violates this Bill? Why should it be left to other people? That is the question. I want the real test. Certainly if after a marriage has taken place in the Brahmin community, five Brahmins in the neighbourhood or five Brahmins from any other place come and prefer a complaint, well that at least will give satisfaction to the persons who sponsored the Bill and for the State also that the measure proposed is a proper one. Then there will be justification for us to say "Well, here is a law which gives expression to the sentiments and views of the community largely affected by child marriage". The history of legislation in every country, I dare say with a certain amount of truth, is an expression of class consciousness. Mark the history of legislation in England and in British India. You will find that the majority generally imposes its will upon the minority. When the aristocracy was in power legislation was aristocratic. When capitalism was in power it is the expression of capitalism that we find in legislation. When the proletariat was in power, we find that the views of the proletariat are given expression to in legislation. I appeal to the House to give me an opportunity to convince every one in the house that no honest Brahmin will come forward to prosecute a person for child marriage. I state this in all sincerity. I know the mind of the community. I know what its traditions are. Then why should it be left to persons belonging to any other community to institute a prosecution and interfere with the solidarity of the community? Why not give the members of the community itself this small privilege? If after one year's trial you find that at least half a dozen prosecutions have been initiated by five Brahmins, then you will have the satisfaction that the law is meeting with the approval of the community. If 5 persons express their view that there is necessity for this legislation, then at least there will be consolation for the persons who sponsored the bill that they were in the right as well as for the persons who stoutly oppose the bill that after all they were mistaken. We are prepared to take the defeat calmly and in a sportsman like manner. I am not at all personally interested in the matter but a legislation which does not take into account the views of the community or communities affected by it is no legislation at all. It will be really misusing our powers if we legislate thus. The so called Sarada Act is alive long in British India. It has been made more living by the recent amendment. Probably sometime hence some thing more will be added to it. But so far as Travancore is concerned we are having it for the first time. We are certainly thankful to our friends who wish well of us. They certainly sympathise with us, with the Brahmin men and much more with the Brahmin women and they adopt the policy of *sarve janah sukhino bhavanthu* that all people should be happy, they think that the Brahmin men are

extremely selfish and that the Brahmin women are unable to speak for themselves. The other communities say that they are therefore interested in seeing that no part of society is unhealthy or is having a deceased condition. We are indebted to you very much for that. But it all proceeds upon an assumption that our community appreciates it. If in the view of this house the sense of the Brahmin community is wholly irrelevant to the enactment of this legislation then there is an end of the matter. But if the sense of the community is an important factor in the passing of this law and the sense of that community has not been taken as it should have been taken to remedy that defect, let there be what is called a subsequent test. When child marriages are performed let 5 Brahmins come forward and complain about it. Is there anything strange or peculiar in restricting a prosecution to cases where a prosecution is intiated in a particular way? Certainly my friends will agree with me in the statement that the jurisidiction of a court is the authority to decide matters litigated before it when presented in a formal way for its decision. It is an accepted policy of the law right through that certain matters should be taken cognizance of by a tribunal having jurisidiction only if presented in a formal way. Forms and ceremonies are necessary, whatever we may say about them. They live with us and sometimes out-live us. So what I suggest is only a form. In the Criminal procedure Code you have got sections relating to the taking cognizance of offences only upon complaints, upon sanctions and so on and so forth. It is not left to individuals, for example to bring cases relating to public servants. The complaint against the public servant can be made only with the sanction of Government. In compoundable cases the complaint of the aggrieved party is necessary. Therefore I say in this particular case, since it is a novel measure, if a prosecution is to be started upon a complaint that complaint should proceed from five persons who are members of the community to which the party committing the offence belongs. I am pleading for what I take to be a plea of the right sort.

(The President Vacated the chair at this stage and the Deputy President presided.)

MR. N. RAMAKRISHNA PILLAI: May I know from the member whether this legislation is supposed to be enacted in the interest of the public at large or in the interest of a particular community?

MR. E. SUBRAMONIA AIYAR: As I understand it, Sir, this legislation must be taken to be not in the interest of the public, but the communities seriously affected, and I am keeping that well in view. Therefore it is that I have not mentioned any particular community in my amendment. I was very cautious in regard to that. I said five members of the community to which the parties belong. If there is any other aggrieved community or if any other community does not want this

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law to be passed, the views of that community also may be ascertained. The test is, if a certain community feels that child marriage is after all a thing not to be tolerated, be the reason what it may—some will say reform, opponents like me will say the result of inferiority complex—if my amendment is accepted the truth or otherwise or the validity or otherwise of the contention of either side can be tested. If a particular community feels that this is a very wise peace of legislation certainly the people of that community will come forward and put an end to child marriage. If another community feels that it is an unwanted innovation the result of the prosecution will show that. Therefore I say that not only should the section not be changed at all—the section says "save upon a complaint," I will go further and say that it must be upon complaint by a few persons of the community to which the party belongs.

MR JOSEPH VITHAYATHIL: Suppose the parties marrying belong to two different communities.

MR E. SUBRAMONIA AIYAR: Sir, not that I did not think of that contingency, but when I speak about a community I am not referring to a particular religion.

MR. PUTHUPALLY S. KRISHNA PILLAI: In that case, will not more than five persons be forthcoming from one or other of the two communities?

MR. E. SUBRAMONIA AIYAR: That is hypothetical. Suppose, a Muslim marries a Christian. Under the Mahomedan law such marriages are permitted and are valid. The only restriction is—

MR. C. JEBAMONY NADAR: May I know from the honourable member whether a Christian can marry a Muslim woman?

MR. E. SUBRAMONIA AIYAR: Certainly, my friend does not require any elucidation from me. I can refer him to any book, recent or old, Mahomedan Law. A Muslim can marry a Christian lady but a Muslim lady cannot marry a Christian gentleman. I shall certainly leave it to my friend to verify the accuracy or correctness of my statement. Say a child marriage takes place between a Muslim and a Christian. Certainly the marriage is perfectly valid under the Christian Law.

MR JOSEPH VITHAYATHIL: Does the honourable member know that one Mr. Baker, a Mahomedan has married a Christian?

MR. E. SUBRAMONIA AIYAR: I am aware of that. But apart from that, I know I am perfectly correct in my statement of the law as it stands at present. In such cases you may have five from each community. But such cases will be very rare. If the House requires any modification of my amendment I have not the slightest objection to it. The object of my amendment is to find out whether after all this is such a blessed product of British India which must be given free quarter in our country. That is one aspect of the matter.

About the time limit six months' period was first fixed. I thought that somebody will bring in an amendment that the period shall be three months. Why not one year? In that case it will all be one-sided and it will give room for continued blackmailing.

There should be no scope for black-mailing. Under the Law of Limitation certain complaints should be filed within 30 days of the occurrence. For tresspass, assault and other compoundable offences, the period of limitation is 30 days. In that manner, in regard to marriages, six months, time is more than enough. A case may be lodged with the authorities stating that a child marriage has been solemnised. As a matter of fact, the marriage might have been no child marriage at all. Once however the complaint is made, doctors, teachers, purohits, etc., will have to be called in as witnesses if the cases are be defended with the result that persons are disturbed from pursuing their even tenor of life. If anything happens like-that, it is really unfortunate. The party concerned cannot remain in peace for a period of one year, even though the solemnisation of marriage was proper according to the amendment now proposed in the Bill. It is open to a mischievous man to ask for a huge sum of money from a party and say that if the money was not forthcoming, a complaint may be filed. I prophesy – I seldom do it – this day that such a thing will happen, namely that a mischievous man may drag a party unnecessarily into a court. Why should the period be fixed as one year? Why not the period be put down at six months and the whole trouble over by then? So far as the time limit is concerned, on no account it shall be increased.

Another point is about addition of the words "information laid." There is a section in the Criminal Procedure Code that First Class Magistrates can take up a case on a complaint, police report or information. I am glad that there is no proposal to subject the parties who have participated in a marriage to the inquisitive investigations of the police officer. I am not finding fault with the police officers as a body. They may be only discharging the duty imposed on them. With all the advantages which the modern civilisation has secured to us we are subjected daily to minute interferences by the so-called reformers. Our civilisation is so complex and intricate that on analysis it will be found that the residue of liberty left to you, is practically nil.

Child marriage informers will be generated by this statute. Are we to create a set of pests like this? Why should we create all this difficulty? Why should investigation proceed on information supplied by a mischief maker? It is said that in the British Indian Act this provision was added to the original Act. What if? Fish is good for Bengal Brahmins? Should the South Indian Brahmin be compelled by a fiat of the legislature to eat fish? If there is an earthquake in British India,—God forbid—or say famine pestilences you do not desire that such things should come here. If one gentleman in British

[Mr. E. Subramonia Aiyar]

India thought it fit to add the words "or information laid" so far as that area is concerned, to adopt it here also bespeaks insanity. The so-called reformers brought the Sarda Act. They provided certain stringent provisions in the Bill. Later on they found the result was not as anticipated. It was demonstrated that the law was not socio-physiological. They found that no people came forward to complain. Then they made it more stringent. Whatever success is attained there, are we to succumb to the feelings or the passions which might have given birth to the Sarda Act. Therefore, the real question here is, why should the expression 'or information laid' be inserted? why should we give a handle to a police officer or to any man to take upon the role of a prosecutor? It requires deep consideration whether a man's life should be subjected to interference from all quarters. I am refering to these to show that we should not be carried away by what is happening elsewhere. One great difficulty in us is the utter indifference to think about these matters. After all, one might ask, what is there in all these? We pride in the fact that we are tolerant! I do not call it 'tolerant' but it is 'indifference.' Ever so many small things make up a comprehensive whole. From that you take away the small things one by one and thus what is left finally is nothing. It should not be the aim of legislators to unduly interfere with the rights of a person.

MR. N. RAMAKRISHNA PILLAI: May I know whether the State has any duty to interfere with individuals?

MR. E. SUBRAMONIA AIYAR: No answer from me is needed. The statement of my friend contains the answer thereto. Whatever the Nazis may say and the fascists may say, the State is for us and we are for the State. Its prime duty is towards the individual and towards the nation. The State is not an abstract entity or a myth, or a leviathan. The State has got its duties as well. Therefore, in passing a legislation, it is the primary duty of the State to see that the individuals who form the State are allowed a free, healthy development and have ample power to express themselves in all directions, but not to affect the cohesion and existence of the society as a whole.

Coming to the point where I left, namely, why add "information laid," why not close the doors completely? Let the parents be punished for the existence of children who have contracted child marriage. I grant all that. But, why should prosecution be started on information received from anybody? There is a complaint referred to in Section 10. The Section reads thus:

'10. (1) At any time after examining the complainant and before issuing process for compelling the attendance of the accused, the court *may*, for reasons to be recorded in writing, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under Section 227 of the *Code of Criminal Procedure* and if such security is not furnished within such reasonable time as the court may fix the complaint shall be dismissed.

(ii) A bond taken under this section shall be deemed to be a bond taken under the *Code of Criminal Procedure* and Chapter XL of that Code shall apply accordingly."

The amendment relates to the information laid which is dealt in Section 8. When the Select Committee framed its report, this amendment was not contemplated. Section 8 reads thus:—

"No Courttake shall cognisance of any offence under this Regulation save upon complaint made within six months of the solemnisation of the marriage in respect of which the offence is alleged to have been committed."

DEPUTY PRESIDENT: The House will now rise and meet again at 11'O clock, the next day.

The House adjourned at 5 P. M.

A. GUNAMONY,

Secretary to the Sri Mulam Assembly.

PROCEEDINGS

OF

THE TRAVANCORE SRI MULAM ASSEMBLY.

(*OFFICIAL REPORT*)

SECOND ASSEMBLY.

FOURTH SESSION.

Tuesday the 14th February 1939/2nd Kumbhom 1114.

The Assembly met at the Legislative Chamber on the 14th February 1939/2nd Kumbhom 1114 at 11'o clock with the President, Sachivottama Sir C. P. Ramaswami Aiyar K. C. I. E., in the chair.

QUESTIONS & ANSWERS.

Central cross road in the Alwaye P. W. D. Division.

62. ***MR. K. P. KOCHUKORA THARAKAN** (*Kunnatnad cum Parur*): Will the Government be pleased to state;

(*a*) the number of working sections into which the central cross road in the Alwaye P. W. D. Division, is divided; and

(*b*) the sections of the said road, the construction of which has been completed and the sections, the construction of which has not yet been completed?

MR. G. B. E. TRUSCOTT (*Chief Engineer*): (*a*) Five Sections.

(*b*) The first section has been completed and the fifth section is in progress. The work was commenced from both ends as there were interested parties for opening the same. The third section is proposed to be taken up next for which the land acquisition proceedings are in progress. The fourth section will be taken up after the lands are acquired.

MR. K. P. KOCHUKORA THARAKAN: ക്രാസ്റോഡ് എന്നു പറയുന്നതു് ഏതുമുതൽ ഏതുവരെയാണു്?

MR. G. B. E. TRUSCOTT: I am afraid I am not in a position to give the answer now. But the work may cost about Rs. 1,400 for completing that section.

MR. K. P. KOCHUKORA THARAKAN: എം. സി. റോഡിൽ മൂവാററുപുഴ റോഡിന്റെ ആറാമത്തു മൈൽക്കററിക്കു് അടുത്താണു് ഈ ക്രാസ റോഡ് എന്നുള്ളതു് അറിയാമോ?

MR. G. B. E. TRUSCOTT: I think if we open the road it will give convenience for traffic.

MR. K. P. KOCHUKORA THARAKAN: ഈ രണ്ടുമൈൽ ദൂരമുള്ള കയറ്റം ഒഴിച്ചാൽ എം. സി. റോഡിൽ സഞ്ചാര സൌകര്യം വളരെ വർദ്ധിക്കുമെന്നുള്ള വിവരം അറിയാമോ?

MR. G. B. E. TRUSCOTT: Yes, I have already stated in the answer that the work will begin in the fourth Section after the lands are acquired.

MR. K. P. KOCHUKORA THARAKAN: അതിലേക്കുവേണ്ട സ്ഥലം പൊന്നുംവിലകൂടാതെ വിട്ടുതരാമെന്ന് അവിടത്തെ ജനങ്ങൾ അപേക്ഷിച്ചിട്ടുണ്ടോ?

MR. G. B. E. TRUSCOTT: Yes.

MR. K. P. KOCHUKORA THARAKAN: പൊന്നുംവിലകൂടാതെ റോഡിനുവേണ്ട സ്ഥലം ലഭിക്കുമെങ്കിൽ അത് റോഡുണ്ടാക്കുന്നതിന് വളരെ സൌകര്യപ്രദമാണെന്നു വിചാരിക്കുന്നില്ലേ?

MR. G. B. E. TRUSCOTT: Certainly.

Appointments and promotions i the Land Revenue Department.

63. * **MR. S. NARAYANA PILLAI** (*Quilon cum Kottarakara*): Will the Government be pleased to state:

(*a*) whether there is a G. O. fixing the proportion of graduates and undergraduates in regard to appointments and promotions in the Land Revenue Department, since the standardisation scheme was put into effect, and, if so the provisions thereof;

(*b*) whether the principle of the G. O. is being strictly adhered to in all appointments, acting, permanent and temporary; and

(*c*) if the answer to (*b*) is in the negative, the reasons for the departure from the rule together with the cases in which such deviation has been made?

MR. M. RAMACHANDRA RAO (*Land Revenue and Income Tax Commissioner*): (*a*) Yes. *Extract of G. O. R. O. C. No. 680/35/1/Gl. dated 16-4-35 on the subject is laid on the table. (*b*) & (*c*) Yes, in the matter of permanent promotions to the grade of Rs. 25-40 and above up to Rs. 100-125. In temporary and acting vacancies of less than 3 months duration, the proportion is not generally maintained with a view to avoid dislocation of work.

Nadar Christians in the Account Office.

64. ***MR. D. FRANCIS** (*Kalkulam cum Vilavankod*): Will the Government be pleased to lay on the table:

(*a*) a list of Catholic, Hindu and Protestant Nadars who have been appointed both permanent and acting from 1-1-1100 to 1-1-1114 in the Account Office with their names, pay and date of appointment; and

(*b*) promotion, if any, given to them during the past 14 years nd the increase of pay given to them with their names and date of promotion?

* *Vide* Appendix I.

MR. M. GOVINDA PILLAI (*Financial Secretary to Government*): (*a*) and (*b*). The information asked for is not in conformity with the classification of the various communities of the State for purposes of recruitment to the Public Service, as recognised by Government in their order R. Dis. No. 893/Gl., dated 25-6-1935. The classified lists maintained by Heads of Departments and Offices are in conformity with the above G. O.

Labourers at Alleppey.

65. ***MR. S. NARAYANA PILLAI**: Will the Government be pleased to state the demands of the labourers at Alleppey and the efforts made by Government to meet their demands together with the result?

MR. M. K. NILAKANTA AIYAR (*Ag. Chief Secretary to Government*): The main grievances and demands of the labourers in the coir mats and matting factories in Alleppey, and the surrounding places, as set forth in the memorandum dated 23-9-1113, submitted to the District Magistrate, Quilon, by the Managing Committee of the Travancore Labour Association (now registered as the Travancore Coir Factory Workers' Union) are the following:—

Grievances.

(*a*) Continued reduction of wages,
(*b*) Refusal of employers to raise wages to a level adequate to meet primary requirements,
(*c*) Payment of wages in kind and
(*d*) Contract system.

Demands.

(*a*) That a minimum wage should be determined which the employers should be made to pay to the Labourers.
(*b*) That instead of payment of wages on a piece-work basis, fixed wages should be paid daily, weekly or monthly.
(*c*) That the same rate of wages should be paid for the same kind of operations in the different factories or, in other words, wages should be standardised.
(*d*) That Wage-Boards should be created for settling disputes regarding wages.
(*e*) That Payment of Wages Act and such other Labour Acts should be enacted in Travancore; and
(*f*) That a Labour Department of Government should be created or a Commissioner of Labour should be appointed to protect the interests of Labour in the State.

The efforts made by Government.

On the 21st March 1938, the Government directed Mr. T. Chandy, the then District Magistrate, Quilon, to conduct an enquiry into the grievances alleged by the labourers. From this preliminary enquiry, Government were satisfied of the necessity for appointing a Committee to enquire into the Labour conditions prevailing in the mats and matting factories.

Accordingly, a Committee of enquiry was appointed with Mr. K. N. Govindan, the present District Magistrate, Quilon, as Chairman and two representatives each of employers and labourers

The Trade Disputes Act, V of 1114, came into force with effect from the 25th October 1938, and Government felt that it would be the most effective and appropriate procedure to order a full judicial enquiry into the matter, under the provisions of the Act, by a Board of Conciliation. Government have, therefore, appointed for the purpose, a Board of Conciliation, with an independent Chairman and two representatives each of employers and labourers.

The Board is proceeding with its work and it is reported that both the employers and the labourers are co-operating with it.

MR. K. R. NARAYANAN (*Vaikam cum Kottayam*) : ആലപ്പുഴയുള്ള തൊഴിലാളികളുടെ സങ്കടപരിഹാരം കണ്ടുപിടിച്ചു റിപ്പോർട്ടു ചെയ്യുന്നതിനായി കൊല്ലം ഡിസ്ട്രിക്ട് മജിസ്ട്രേട്ടിനെ നിയമിച്ചിരുന്നില്ലേ?

MR. M. K. NILAKANTA AIYAR : നിയമിച്ചിരുന്നു.

MR. K. R. NARAYANAN : അദ്ദേഹത്തെ അതിലേക്കു നിയമിച്ചിട്ട് ഇപ്പോൾ എത്രകാലമായിട്ടുണ്ട്? മി: ചാണ്ടിയെ ഇതിലേക്കായി നിയമിച്ചിട്ടില്ലേ?

MR. M. K. NILAKANTA AIYAR : മി. ചാണ്ടിയെ നിയമിച്ചിരുന്നു.

MR. K. R. NARAYANAN : അദ്ദേഹത്തെ നിയമിച്ചിട്ട് ഇപ്പോൾ എത്ര കാലമായിരിക്കും?

MR. M. K. NILAKANTA AIYAR : ഇപ്പോൾ ഒരു കൊല്ലമായിട്ടുണ്ട്.

MR. K. R. NARAYANAN : അദ്ദേഹം ഈ സംഗതിയെ സംബന്ധിച്ചു എന്തെങ്കിലും ഗവണ്മെന്റിലേക്ക് റിപ്പോർട്ടു ചെയ്തിട്ടുണ്ടോ?

MR. M. K. NILAKANTA AIYAR : മി. ചാണ്ടി ഇതിനെക്കുറിച്ച് റിപ്പോർട്ടു ചെയ്തിട്ടുണ്ട്.

MR. K. R. NARAYANAN : ഈ റിപ്പോർട്ട് തയാറാക്കി അയക്കുന്നതിനുള്ള താമസം കൊണ്ടല്ലേ ആലപ്പുഴ സമരം തുടങ്ങാൻ കാരണമായിത്തീർന്നത്?

MR. M. K. NILAKANTA AIYAR : അല്ല.

MR. K. R. NARAYANAN : ഗുരുതരമായ അന്തരീക്ഷമാണോ അപ്പോൾ അവിടെ ഉണ്ടായിരുന്നത്?

MR. M. K. NILAKANTA AIYAR : അന്തരീക്ഷത്തെപ്പറ്റി ഒന്നും പറയുവാൻ സാധിക്കുകയില്ല.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI (*Tiruvalla*): Sir, on a point of order. Is the member in order in putting supplementary questions especially when specific answers are given?

PRESIDENT: He is not in order excepting in using it as a kind of argument.

MR. K. R. NARAYANAN: ഇപ്പോഴും അവിടെ ഗുരുതരമായ ഒരു അന്തരീക്ഷമാണോ ഉണ്ടായിരിക്കുന്നത്?

MR. M. K. NILAKANTA AIYAR: അല്ലാ. ശാന്തമാണ്.

MR. K. R. NARAYANAN: ഇപ്രകാരം ഒരു റിപ്പോർട്ട് ഇതിനുമുമ്പു തന്നെ തയാറാക്കിയിരുന്നു എങ്കിൽ ഇന്നത്തേക്കാൾ ശാന്തമായ ഒരു അന്തരീക്ഷം സൃഷ്ടിക്കാൻ സാധിക്കുകയില്ലേ?

MR. M. K. NILAKANTA AIYAR: അങ്ങിനെ വരുമെന്നു തോന്നുന്നില്ല.

MR. K. NARAYANAPERUMAL NADAR (*Tovala cum Agastiswaram*): May I know how many judicial enquiries under the provisions of the Act were conducted since 25th October 1938?

MR. M. K. NILAKANTA AIYAR: Only one enquiry.

MR. K. NARAYANAPERUMAL NADAR: Is it an enquiry under the provisions of the Trade Disputes Act?

MR. M. K. NILAKANTA AIYAR: It is.

Periodicals published from the Cochin State.

66. * **MR. S. NARAYANA PILLAI** (*Quilon cum Kottarakara*): Will the Government be pleased to lay on the table a list of periodicals published from the Cochin State and circulated in Travancore, since 1938?

MR. M. K. NILAKANTA AIYAR: A list of the periodicals referred to is given below:—

1. Deepam.
2. Jaya Bharathi.
3. Vasumathi.
4. Malayala Manorama.
5. Prakasam.
6. Gomathi.
7. Malabar Mail.
8. Bharatha Mithram.
9. Sanathani.
10. Malabar Herald.

MR. K. R. NARAYANAN: ദീപം എന്ന മാസികയുടെ പ്രസിദ്ധീകരണം ഇവിടെ തടഞ്ഞിട്ടുണ്ടോ?

MR. M. K. NILAKANTA AIYAR: തടഞ്ഞിട്ടുണ്ട്.

MR. K. R. NARAYANAN: ആറുമാസത്തേക്കു തടഞ്ഞിരിക്കുമോ?

MR. M. K. NILAKANTA AIYAR: ആയിരിക്കാം.

MR. K. R. NARAYANAN: ഇത്രയധികം പത്രങ്ങളുടെ പ്രസിദ്ധീകരണം ആറുമാസക്കാലത്തേക്ക് തടയാനുള്ള കാരണം എന്താണെന്ന് പറയാമോ?

MR. M. K. NILAKANTA AIYAR: അവയെ തടയുന്നതിനുള്ള കാരണത്തെപ്പറ്റി ഇവിടെ പറയാൻ സാധിക്കയില്ല. ഗവൺമെൻറിൻെറ ദൃഷ്ടിയിൽ അവയുടെ പ്രസിദ്ധീകരണം തടയേണ്ടതാണെന്ന് തോന്നി.

MR. K. P. KOCHUKORA THARAKAN: പ്രസിദ്ധീകരണം തടഞ്ഞിട്ടുള്ള പത്രങ്ങളിൽ ഏതിനെങ്കിലും വീണ്ടും നടത്തുന്നതിന് അനുവാദം കൊടുത്തിട്ടുണ്ടോ?

MR. M. K. NILAKANTA AIYAR: കൊടുത്തിട്ടുണ്ട്. മലബാർ മെയിലിന് അനുവാദം കൊടുത്തിട്ടുണ്ട്.

MR. K. P. KOCHUKORA THARAKAN: അപ്പോളജി ചെയ്തശേഷമാണോ അതിനു അനുവാദം കൊടുത്തിട്ടുള്ളത്?

MR. M. K. NILAKANTA AIYAR: അതെ.

MR. M. SIVATHANU PILLAI (*Tovala* cum *Agastiswaram*): May I know from Government whether any of the papers had apologised after the prohibition?

MR. M. K. NILAKANTA AIYAR: Yes.

MR. THARIATHU KUNJITHOMMEN (*Muvattupuzha* cum *Devicolam*): തിരുവിതാംകൂറിൽനിന്നും പുറപ്പെടുന്ന ഏതെങ്കിലും പേപ്പർ ക്ഷമായാചനം ചെയ്തിട്ടുണ്ടോ?

MR. M. K. NILAKANTA AIYAR: മലബാർ മെയിൽ തിരുവിതാംകൂറിൽ ഉള്ളതാണല്ലോ!

MR. THARIATHU KUNJITHOMMEN: തിരുവിതാംകൂറിൽനിന്നും പത്രം പുറപ്പെടുവിച്ചുകൊണ്ടിരിക്കെ അതിനെ തടയുകയും ക്ഷമായാചനം ചെയ്തശേഷം വീണ്ടും നടത്തിക്കൊള്ളുവാൻ അനുവാദം കൊടുക്കയും ചെയ്തിട്ടുള്ളതായി വല്ല പേപ്പറും ഉണ്ടോ?

MR. M. K. NILAKANTA AIYAR: അത് ഇപ്പോൾ ഓർമ്മയില്ല.

UNSTARRED QUESTIONS AND ANSWERS.

Statement re: amount realised by fishing.

8. MR. CODIVEETIL C. RAMANKUNJU (*Nominated*): Will the Government be pleased to lay on the table a statement showing the amount annually realised for the past five years by:

(*a*) leasing out by auction right of fishing;
(*b*) registry of stake nets;
(*c*) registry of China nets;
(*d*) royalty on pearls;
(*e*) royalty on shanks; and
(*f*) royalty on lime-shells?

MR. M. K. NILAKANTA AIYAR :A *statement furnishing the information is laid on the table.

Qualifications of Fishery Inspectors.

9 **MR. CODIVEETIL C. RAMANKUNJU**: Will the Government be pleased to state the qualifications of the late Fishery Inspectors Messrs. M. Padmanabha Panicker and K. M. Pothen and the services they have put in, the maximum salary drawn?

MR. M. K. NILAKANTA AIYAR :

	Name of Inspector.	*Qualification.*	*Length of service.*			*Maximum Salary drawn.*
			Years.	Months.	Days.	
1.	M. Padmanabha Panicker	B. A., F. L. S., (Also special training in fisheries.)	16	10	17	Rs. 200
2.	K. M. Pothen	B. A., (Also special training in fisheries.)	27	4	12	Rs. 200

Officers in the Fisheries Department.

10 **MR. CODIVEETIL C. RAMANKUNJU**: Will the Government be pleased to state the salary, qualifications, service (past and present) of officers in the staff of the Fisheries Department?

MR. M. K. NILAKANTA AIYAR: Government do not propose to furnish the information as the time and labour involved in collecting the same will be incommensurate with its utility.

Appendix I.

Vide Answer to Starred question No. 63.

Extract of G. O. R. O. C. No. 680/35/1 Gl., dated 16-4-35.

10. The ministerial posts have been divided into six grades. The lowest grade is in the scale of Rs. 20-½-25 and the next grade is Rs. 25-3/2-40. Graduates wishing to enter the clerical service will, as far as possible, be recruited to the latter grade. Non-graduates in the lower grade may, however, be promoted to the Rs. 25-40 grade in the order of seniority and in the proportion of one to every three graduates recruited. Promotion to the next higher grade of Rs. 40-70 shall be given only to those who have passed the Account Test, the proportion between graduates and non-graduates being maintained as before. Promotion to the next higher grade of Rs. 75-100 shall ordinarily be made in the order of seniority, the proportion of 1 : 3 between non-graduates and graduates being maintained in the total strength of the staff in that grade. The recruitment and promotion to the next higher grade, Rs. 100-125, shall be confined exclusively to graduates.

Heads of Departments may with the sanction of Government recruit directly any candidate with special academic distinction to any of the scales mentioned above provided the proportion of such recruitments does not exceed 10 per cent. of the number of vacancies in that scale in any year.

* *Vide* Appendix II.

Appendix II.

Vide Answer to Unstarred question No. 8.

Statement showing the amount annually realised by fishing for the past five years.

Items.	In 1109.	In 1110.	In 1111.	In 1112.	In 1113.
	Rs.	Rs.	Rs.	Rs.	Rs.
(*a*) Leasing out by auction right of fishing ...	2,659	2,994	2,731	1,690	3,612
(*b*) Registry of stake nets (license fees) ...	3,012	2,218	1,708	1,845	4,572
(*c*) Registry of chinese nets (license fees) ...	324	758	192	115	471
(d) Royalty on pearls ...	Nil.	Nil.	Nil.	Nil.	Nil.
(*e*) Royalty on shanks ...	175	34	686	689	988
(*f*) Royalty on lime-shells (license fees) ...	1,975	2,278	1,462	1,750	2,426

THE CHILD MARRIAGE RESTRAINT BILL.

MR. E. SUBRAMONIA IYER (*Nominated*): Sir, I have explained in some detail the serious consequences which might ensue if the amendments suggested were accepted. I may also draw the attention of the House to the inconsistency, or rather the effect this suggested amendment may have not only upon this Act but also upon the community. Now the clause stands like this:—

> "No court shall take cognizance of any offence under this Regulation save upon complaint made within 6 months etc. etc."

But in clause 9 which is a consequential clause to clause 8, it is stated as follows:—

> "The court taking cognizance of an offence under this Regulation shall unless it dismisses the complaint under Section 181 of the Code of Criminal Procedure either itself make an enquiry under Section 180 of that Code, or direct a Magistrate of the I class subordinate to it to make such an enquiry."

If the court can take cognizance of the case upon information as stated in clause 8 so far as clause 9 is concerned, the effect of its operation is taken away.

Then coming to clause 10 which is as follows:

> "At any time after examining the complaint and before issuing process for compelling the attendance of the accused, the court may, for reasons to be recorded in writing, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under Section 227 of the Code of Criminal Procedure and if such security is not furnished within such reasonable time as the court may fix, the complaint shall be dismissed."

So practically the operation of clause 10 also is taken away. If a court is to take cognizance of a case even without a complaint, I may point out that there is absolutely no necessity for any of these provisions because under the ordinary law, as contained in the Criminal Procedure Code, a Magistrate can take cognizance of a case upon a complaint or upon a Police Report like cases for the Abkari or Forest offences. If it happens to be the Magistrate of the I Class he can take cognizance of the case upon information received from an individual. The information laid before a Magistrate should be certainly laid by an individual according to the definition of the complaint contained in the Criminal Procedure Code, a complaint in writing or an oral complaint made before a Magistrate. So it is not necessary that the complaint should be in writing. Oral complaint is also a complaint made before a Magistrate. Then how is it different from the ordinary complaint unless the person who gave the information is not willing to come forward as the complainant. He wants to hide behind the screen in this case. So it is stated in this act that the only court competent to take cognizance of an offence under this Bill is a Magistrate of the I class including a District Magistrate.

[Mr. E. Subramonia Iyer]

It is laid down in the Criminal Procedure Code that the Magistrate can take cognizance either upon a complaint or upon a police report. There is absolutely no necessity for clause 8 to be amended. In my view the best thing would be to delete clause 8.

Clause 9 is unnecessary because there is a provision in the Criminal Procedure Code that whenever a Magistrate takes cognizance of a complaint if he distrusts the truth of the complaint he may dismiss the case and direct an enquiry be conducted by a subordinate. Now that clause also is not necessary. It is enough if the Criminal Procedure Code is followed in this respect. Now coming to clause 10 it is stated that in cases where complaints have been found to be frivolous or vexatious the court may direct compensation to be given to the accused by the person who have instituted, or brought that complaint. Even in other cases the person who set the law in motion even though he actually preferred the complaint he may be called upon by the Magistrate to bear compensation. The idea behind the introduction of this amendment seems to be that the information may be given by anybody to the Magistrate and the person giving the information may hide behind the screen and he may never be called upon to account for if the complain was frivolous and vexatious. Those safeguards which were originally intended by the Bill to prevent vexatious and frivolous complaints are practically taken away by this amendment. So after all the only reason assigned in bringing this amendment is that Legislatures elsewhere thought this amendment was necessary. Sir, there is a small proverb in Malayalam (ഏച്ചുകെട്ടിയാൽ മുഴച്ചിരിക്കും) *i. e.*, if a thing is joined to another somehow or other it will bulge out. Certainly apart from the merits of the Legislation we are expected to see to the best of our ability that the form of a bill should be as compact and as symmetrical and as beautiful as it could be, because beauty is a quality which is not incongruous with any production even though it be a legislative production. Certainly amendments shall come in if they are really required. When you introduce a piece of legislation you want to see and perceive not only the mere wording of it or the construction of it but its implication and its consistency with the general law of procedure. The amendment has not touched any substantive portion of the Bill. It does not affect the legislative intentions of the bill. The intention is there that who ever commits or contributes to child marriage must be subjected to the provisions of the Penal Code. It regulates only the procedure and circumstances under which a prosecution can be launched; When you do that I don't think that there is any necessity to disturb the symmetry and the sense and the consistency of the Bill by introducing an amendment. Moreover, this amendment is not at all in consonance with the scheme of the Criminal Procedure Code. With these words I appeal to the House to reject the amendment.

MR. P. S. NILAKANTA AIYAR (*Nominated*): Sir, in regard to amendments 9 and 10, I may submit that one is by the mover of the bill. The amendment is as follows: -

"The court may take cognizance of an offence under this Regulation, either upon complaint made, or information laid before it, within one year from the date on which the offence is alleged to have been committed."

The second amendment is by Mr. E. Subramonia Aiyar which is as follows:—

"In clause 8, after the words "save upon complaint made" and before "within six months" insert the words "by not less than five members of the community to which the parties to the marriage belong."

Let us take the first amendment. Apart from the complaint made, an information laid before a court of law is as sufficient for the court to take cognizance of a case as a complaint made. This amendment is a copy of the amendment introduced in the Indian Legislative Assembly upon the original Bill introduced by Mr. Sarda. It seems to me in the first place that it will be a slavish mentality to initiate whatever is being done in British India irrespective of the fact how far it is suited to the local conditions here and how far it can be justified on the merits thereof. Wherever there is a difference between the law in British India and the English common law

[At this time the Deputy President occupied the Chair.]

there are a number of instances where we have followed the English common law to the British Indian law. In contracts, for instances, there is a difference as to the time when a contract is complete, *viz.*, whether it is when the offer is accepted or whether it is when the communication of the acceptance reaches the offerer. Similarly, with regard to the law of evidence, there are instances in which there is such difference and we have preferred to follow the English Law. I wanted to suggest that there are cases and instances in which we have thought that the British Law on the point does not suit the conditions obtaining here. It is open to us to decide, having regard to local conditions, which law, one should accept. In British India, it was thought that, necessary safeguards should be made before criminal proceedings are initiated. That is why the provision of a deposit by way of security is mentioned as a condition precedent to the initiation of proceedings. This is not a new provision. In the ordinary Criminal Procedure Code, there are Sections namely 170 to 175, which provide that the mere fact that an offence has been committed will not entitle a court of law to take cognizance of the offence. A complaint from private parties, sanction from Government or a Court of Laws, etc., are conditions that may precede in order that a court may take cognizance of an offence. Two of the sections may be referred to in the Criminal Procedure Code which refer to this aspect of the law. In Part VI, Chapter XV which deals with the jurisdiction of the criminal courts in inquiries and trials, we find eight sections grouped under the heading "Conditions requisite for initiation of proceedings". Why was this introduced in the Criminal Procedure Code? The fact is that the commission of an offence alone should not be made the occasion for the courts to take

[Mr. P. S. Nilacanta Aiyar.]

proceedings against a person. With regard to a number of offences both under the Penal Code and under other Criminal Laws, some preliminaries were made a condition precedent. For instance Section 173 prescribes the preliminary conditions that ought to be fulfilled before prosecution is launched in respect of offences such as contempts of lawful authority of public servants, offences against public justice, offences relating to documents given in evidence and defamation in respect of anything said or done in the Sri Mulam Popular Assembly by the members thereof. The first part namely, Section 173 (*a*) reads thus:

> "No court shall take cognizance of any offence punishable under Sections 165 to 181 (both inclusive) of the Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate".

Section 173 (*b*) says:

> "No court shall take cognizance of any offence punishable under Sections 187, 188 190, 193, 194, 200, 201, 202, 203, 204, 205, 206 or 226 of the same Code, when such offence is committed in, or in relation to any proceedings in any court except with the previous sanction, or on the complaint, of such court, or of some other court to which such court is subordinate".

This is the paragraph which deals with offence against public justice.

Then again, regarding documents given in evidence, the Section 173 (*b*) lays down:

> "No court shall take cognizance of any offence described in Section 465, or punishable under Sections 473, 377 or 478 of the same Code, when such offence has been committed by a party to any proceedings in any court in respect of a document produced or given in evidence in such proceeding except with the previous sanction, or on the complaint of such court, or of some other court to which such court is subordinate."

Sir, in offences relating to defamation, in respect of anything said or done in the Sri Mulam Assembly by the members thereof, also sanction of the Government in writing was necessary to launch a case. For Section 173 (*d*) says:

> "No court shall take cognizance of any offence described in Section 503 of the same Code when such offence has been committed by a member of the Sri Mulam Popular Assembly, for anything said or done in the Assembly, unless upon complaint made by order of, or under authority from, Our Government, or with the previous sanction in writing of Our Government".

I refer to these groups of sections to show that it is not merely the violation of any right or any section in the Penal Code which will enable a court of law to proceed against the delinquent, but certain conditions are fixed as preliminaries to the prosecution. There must be some aggrieved party; or probably a preliminary enquiry has to be made to know whether justice required that the offender should be proceeded against. The mistake or the act committed must be a wanton violation of the law. A court may not take cognizance of it if it is found on enquiry that there is no need for a prosecution. That is why those safeguards have been introduced in the Criminal Procedure Code.

Sir, coming to the sanctions, the nature of the sanctions is also prescribed. It is not everybody who could initiate a prosecution. On the other hand, our Bill, here gives the right to any member of the

public to institute a complaint. That is a very wide provision. When prosecution for offences against the State is considered the law definitely says that (Section 174):

> "No court shall take cognizance of any offence punishable under Chapter VI of the Penal Code (except Section 120), or punishable under Sections 145 A, 164, 182 293 or 508 of the same Code, unless upon complaint made by order of, or under authority from, Our Government".

The State is directly affected in certain offences. The breach of the peace is expected; different communities begin to war against each other. It is therefore for the Government to see what effect it has produced or it is likely to produce before sanction for prosecution is given. The State is the body that is directly affected and it is for the State to see whether proceeding is necessary. So, here before sanction is given, Government have to weigh all these. We have come across a number of cases where the law has been violated; in many of these cases we know that Government have not given sanction to proceed against the offenders. They have to see what the effect of the prosecution, if launched once, will be, whether the peace of the country will be affected or whether any turmoil will follow the prosecution. Therefore, sanction is given only after these aspects are fully considered. Now, these are the safeguards even with regard to the ordinary offences which come under the Penal Code.

As regards the prosecution of public servants, the law is clear in providing certain conditions which should precede prosecution. Section 175 of the Code specifies:

> "When any public servant not removable from his office without the sanction of Our Government, is accused as such public servant of any offence, no court shall take cognizance of such offence, except with the previous sanction of Our Government".

In this case, a further procedure, as to the person who shall conduct the prosecution, or the manner in which it shall be conducted, is also given.

Again, in prosecution for breach of contract, defamation and offences against marriage, it is not any person who can institute a complaint. The Section lays down that only the person who is aggrieved by such offence shall set the law in motion. Section 176 reads:

> "No court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code or under Sections 496 to 499 (both inclusive) of the same Code, or of any offence compoundable without the permission of the court under Section 256 except upon a complaint made by some person aggrieved by such offence.

Thus, only the person who is directly affected by the offence will be able to institute a complaint. Even though the court sees actually the offence being committed before it, it cannot take cognizance of the matter on its own initiative.

Lastly, I refer to the section which safeguards against undue prosecutions for adultery, bigamy or enticing a married woman (Section 177):

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"No court shall take cognizance of an offence under Section 500 or Section 501 of the Penal Code except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed".

Sir, I refer to these sections in detail to show that even ordinary offences, offences in the Penal Code, cannot be the subject matter of a case unless some authority, is given or a party who is aggrieved, lodges a complaint or the court makes an enquiry or does some such preliminaries before the prosecution.

As regards this Bill, the offences created in this Bill required a complaint to be filed. But the first question is who is the person affected by the offence so that a complaint may be lodged by him. Probably, it would be rather difficult to prove that a person is aggrieved by a marriage between two other strangers. No relation, probably, may be coming in as the complainant. One can expect only strangers to come in and file a suit. That is the reason why the framers of this Bill gave the power to lodge a complaint to any person whether he is really aggrieved by the marriage or not. If there is not a responsible person coming forward to prefer a complaint how can the security needed be deposited. If the prosecution appears weak and if the security is not deposited the law will be clearly infringed. What we enact should not be a dead letter. Now, Sir, I oppose this amendment to set at naught this effect, arising out of the provision.

As regards the information, it may be probably instructive to know the corresponding provision in the Criminal Procedure Code as regards initiation of proceedings for prosecution on receipt of information under Section 117 of the Criminal Procedure Code. Any prosecution under Section 117 of the Criminal Procedure Code cannot be started directly by the Magistrate on his own motion because there are certain ways under which alone a prosecution can begin. One such is that a complaint should be preferred by a party; another is that a police report or a charge sheet must be made by the police. A third, which was introduced when the Excise Department was introduced, is the report of the Abkari authorities regarding offences under Abkari Regulation. The last point is as regards the First Class Magistrates or the Second Class Magistrates who have special powers to do so. There also discretion is given to select the Magistrate. They also may take cognizance of the case upon information received from any person other than a police officer. But here Sir, the wording is a little different. The amendment before the House reads different. In the Criminal Procedure Code, the ordinary law of the land, it is information received from any person other than a police officer. Therefore, the Criminal Procedure Code would insist that the information must be from a specific person other than a police officer. In this amendment it is information laid. So the Magistrate is not bound to say from where he got the information. It is not necessary, at any rate. The Regulation does not say whether the information should be in writing or should be

signed by the informant. As regards ordinary cases, the first information report, is generally taken by the police signed as a statement given by the complainant. There is therefore in that case some responsible person who specifically comes forward and says there is an instance in which the law has been violated'. He would then probably be the important witness in the case, P. W. 1. He will be also able to speak either directly to the offence or to special important circumstances in the case. Thus, in the ordinary law there is some such substantial basis on which the court could proceed. But in the amendment now proposed there is no such specific and responsible person. Nor is it specifically mentioned that the information should be taken in writing or signed by the person.

Then again, when we look to other sections of the Bill, Section 10, for instance, gives the court after examining the complaint and before passing an order for attendance of the accused, a discretion to ask the complainant to excecute a bond, with or without sureties for any amount not exceeding Rs. 100 towards payment of compensation. Well, what should we do with cases where the source of the information is not known? Who is to give the security then? Even though prosecution has been started it might be that the case is one in which some security has to be taken. The prosecution may be so weak.

There is provision also for obtaining an injunction to restrain a child marriage when it is about to be solemnised. What will be the result, I ask, if a marriage is stopped at the eleventh hour? It cannot be denied that there are, in society persons who are mischievously inclined. There may be some body who bears a grudge against one or other of the parties to the marriage: and merely to insult the family, he may move the court and obtain an injunction to restrain the marriage. In such a case, the party will have no option but to stop the marriage. It may ultimately turn out that it was not a child marriage at all and that the complaint was entirely without foundation. Now, in such a case, what will be the extent of the loss to the parties to the marriage, the damage done to them? And, after all it may so happen that even the damages, which is all the court can award in such cases, may not be easily recoverable from the complainant.

Then again, under paragraph 2 of Section 170 of the Criminal Procedure Code, there is provision for the transfer of cases from one Magistrate to another. It seems to me highly doubtful whether, in regard to the offences under this Bill, that provision of the Criminal Procedure Code will apply. It may be argued that this is a special law and therefore the provisions of the Criminal Procedure Code would not apply to it excepting in so far as it has been specifically provided for in it. Surely the position is not free from doubt. Further, the provision in the Criminal Procedure Code only enables a party to apply for transfer of cases from one Magistrate to another; and the power to grant such transfer is vested in the High Court or in the District Magistrate; the party is not given the right to demand that a case should be transferred. In the case of a prosecution started on information a right has been created under the Criminal Procedure Code

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in favour of a party to get his case transferred; no option is given to the Magistrate; the case *has* to be transferred. There is no corresponding provision in the Bill. I doubt very much the wisdom of the provision of starting prosecutions on information.

Sir, the importance of this provision can be appreciated if it is realised that the right to institute a complaint is given to all and sundry, even to persons who have absolutely no interest in the parties to the marriage. Anybody in the neighbourhood, strangers even to the community to which the parties to the marriage belong, are given this right; and, especially in these days of communal tension, this provision will be taken advantage of, and frivolous complaints may be lodged against honest, innocent and self-respecting citizens. The representatives of the community most affected by this measure have declared emphatically in unequivocal terms that this Bill is unnecessary; and now here is a provision giving the rights even to strangers to the community to complain to the Magistrate. Certainly, this provision is likely to be misused.

Incidentally, this provision takes me to the amendment in the name of Mr. E. Subramonia Aiyar which states that a complaint can be preferred only by not less than five persons of the community to which the *parties* to the marriage belong.

MR. M. SIVATHANU PILLAI: Are we concerned now with that amendment which we are going to take up afterwards?

DEPUTY PRESIDENT: A passing reference can be made to that amendment also.

MR. P. S. NILAKANTA AIYAR: Although that amendment is numbered separately, it relates to the same Section; the subject matter is the same.

MR. C. JEBAMONY NADAR: It may happen that the subsequent amendment is not moved at all.

MR. P. S. NILAKANTA AIYAR: I take it that amendment also has been moved.

MR. M. SIVATHANU PILLAI: No, it has not been moved.

MR. C. JEBAMONY NADAR: Mr. E. Subramonia Aiyar spoke upon it without moving it.

MR. P. S. NILAKANTA AIYAR: I would like to know from the Chair whether I am to confine my remarks to the first amendment alone.

DEPUTY PRESIDENT: So far as I am able to gather, Mr. Subramonia Aiyar has not moved his amendment; he only referred to it in the course of his argument.

MR. E. SUBRAMONIA AIYAR: A word of personal explanation, Sir. So far as the amendment is concerned, if the portion "or information laid before it" is accepted by the House, certainly, there will be no point in my moving my amendment which is a qualification of the word

"complaint" contained in the Bill. The amendment that we are now discussing is that the court may take cognisance of a matter on complaint or information received. I brought to the notice of the House that my amendment also has got a considerable bearing upon the matter in issue, and I adduced that as one of my arguments for stoutly opposing this amendment, because if this amendment is accepted in toto my amendment goes.

DEPUTY PRESIDENT: Your amendment was not moved?

MR. E. SUBRAMONIA AIYAR: No, it was not moved.

MR. P. S. NILAKANTA AIYAR: Now that the position has been made clear, I shall confine my remarks to the first amendment.

For a prosecution to be started, a complaint is necessary; and I submit that the power to institute a complaint should be restricted in the way suggested by the latter amendment which we are going to take up later on. I lay emphasis upon the idea of the latter amendment, because at least the complainants would belong to the same community as that of the parties to the marriage; they need not fear any mischief from strangers to the community. I shall illustrate my position. Suppose there is a marriage performed in the community to which I belong, the Brahmin community. I do not think anybody would go to the extent of asserting that there is not even a single Brahmin who has got these so-called advanced views; certainly, there are some Brahmins who believe, rightly or wrongly, that child marriage is bad in fact they insist on post puberty marriage of their girls. There are also others in the Brahmin community who, though they may not abhor pre-puberty marriage as something repugnant, actually marry their girls only after they attain puberty, solely due to economic reasons; because even a person of average means has to pay a substantial amount in the shape of dowry. There are not many Brahmins who can afford it. No doubt the bulk of the Brahmin community have the feeling ingrained in them that, even apart from the opprobrium of the neighbours belonging to the community, they would be committing a great sin by violating the Sastras if they give away their girls in marriage after they attain puberty. There may also be cases of very old men who want to see their grandchildren married during their life time itself. There may be a very desirable boy, but the girl may be only nine: all the same the old grand-father might like to see the girl married to that boy even during his life time; because, after his death all his money might be taken away by persons who are interested in his money alone, and no one might think of this happy alliance.

MR. M. SIVATHANU PILLAI: The honourable member is repeating arguments which have been already advanced. All these aspects have been discussed thread-bare when the question of the age was discussed.

DEPUTY PRESIDENT: The chair will intervene when necessary.

MR. P. S. NILAKANTA AIYAR: Who are the persons likely to institute a complaint, what is the feeling of the members of the various communities, these points I submit are quite relevant to the present discussion.

DEPUTY PRESIDENT: You may proceed.

MR. P. S. NILAKANTA AIYAR: As I said, Sir, even among the Brahmins there are some who are definitely of the opinion that girls should be given over in marriage only after they attain fourteen years of age not only they are of the view, they also want the rest to follow their lead. It cannot be said that there is nobody in the Brahmin community who holds that view. Even in the Brahmin community there are some such people; but in the other communities, probably there may be many to hold that opinion.

MR. M. SIVATHANU PILLAI: I question that statement.

MR. P. S. NILAKANTA AIYAR: My submission is that, besides those honest persons who hold the so-called advanced view, there may also be others who are mischievously inclined. Certainly, they should be checked. Such false complaints are perfectly possible and the law should provide not only for probabilities but also for all possibilities. Especially in these days, it is not unlikely that, against the parties to a marriage in a Brahmin house, mischievously inclined members of other communities may prefer false complaints, merely to harass the parties to the marriage.

MR. PUTHUPALLI S. KRISHNA PILLAI: Is it the opinion of the Honourable Member that the Brahmin community cannot boast of such individuals who are inclined to prefer unfounded complaints against members of other communities merely for the purpose of harassing them?

MR. P. S. NILAKANTA AIYAR: I say that, in the present state of communal discord, it is more likely for members of the other communities to take advantage of these provisions and to harass the members of the Brahmin community, who are most affected by this legislation. I am at probabilities and not possibilities.

MR. PUTHUPALLI S. KRISHNA PILLAI: Cannot a member of the Brahmin community prefer a complaint against a marriage performed by members of some other community?

MR. P, S. NILAKANTA AIYAR: I was only giving one instance; I did not give an exhaustive list of the communities the members of which might prefer such complaints. Any how, pre-puberty marriages are more common in the Brahmin community than in other communities, so that complaints under this Bill are likely to be more common against the Brahmin community than against any other community.

MR. PUTHUPALLI S. KRISHNA PILLAI: Are there not an equally large number of marriages in other communities as well which may be taken advantage of by members of the Brahmin community for purposes of unfounded prosecutions?

MR. P. S. NILAKANTA AIYAR: I am not sure whether there would be an equal number of pre-puberty marriages in the other communities as you find in the Brahmin community; I thought we were all agreed on that point.

MR. PUTHUPALLI S. KRISHNA PILLAI: I am asking whether, in the matter of unnecessary or frivolous prosecution, equal opportunity is not available to the Brahmins as it is to the Nayar, the Christian or the Mahommedan?

MR P. S. NILAKANTA AIYAR: At any rate my own view is that there are more pre-puberty marriages in the Brahmin community than in any other community so that the chances for prosecution under this Bill—therefore for frivolous and mischievous prosecutions also—are mostly against the Brahmin than against any other community. In the case of Mahommedans and some sections of the Christians, it is left to their option to perform post-puberty marriage as well. But in the case of Brahmins, we are compelled under the sastras to give our girls away in marriage before they attain puberty. I do not think there is this kind of compulsion in the case of any other community.

MR. E. SUBRAMONIA AIYAR: May I know from the Honourable member what, according to him, is the object of the mover of this Bill in bringing forward this piece of legislation? Is it to make persons who contravene these provisions criminals of a particular type, or is it to educate the communities concerned, to bring them to their senses, to make them realise the evils of child marriage?

MR. P, S. NILAKANTA AIYAR: The object, it seems to me is the former one. Sir, this is only acceding to the wishes of social reformers in the country who want to hasten the pace of reform by means of legislation. They are not satisfied unless the post puberty marriage comes to this community also and monopolised it by penalising existing prepuberty marriage. Their object seems to be to drive a coach and four over the sentiments of the community which wants to follow the sastras, and to change by legislation recognised principles long acted upon on the basis of the sastras. As I said, this is not an enabling piece of legislation. It is a penalising statute. It does not simply say if you perform post-puberty marriages we will recognise them and there shall be no opprobrium attached to such marriages. On the other hand the object of the legislation is to punish and send a few people to jail because they think on account of their religious convictions they have to marry their daughters before they attain puberty.

With regard to the court acting upon information I expected that the mover of this amendment would explain how this information has to be laid before the court. Whether a definite person has to take the responsibility for the facts and whether he knows the facts directly, in-directly or only by hearsay. It is a well known fact that in a court of law hearsay evidence could not be admitted. Still the mover of the amendment wants the court to take action on mere information laid before it. It may be an unauthorised newspaper report for which nobody is responsible. Even in cases where the court cannot accept hearsay evidence, the mover of the amendment wants the court to act and start prosecutions on it That seems to me to go against the fundamentals of the law of evidence. But here hearsay evidence car

[Mr. P. S. Nilakanta Aiyar.]

be accepted and if some person comes and says he heard that such-and such a child marriage, tookplace, the mover wants the court to take action.

MR. M. SIVATHANU PILLAI : May I know from the member, whether a court taking cognizance of a case necessarily means the starting of a prosecution?

MR. P. S. NILAKANTA AIYAR : As I have understood it, the court takes cognizance of a case only to start a prosecution. Mr. Sivathanu Pillai suggests that there are other ways of how a court can take cognizance of an offence without a prosecution, I am not aware of such ways.

MR. M. SIVATHANU PILLAI : When a person gives information before the court, can not the court ask the informer to swear and then proceed with the case if it is absolutely necessary?

MR. P. S. NILAKANTA AIYAR : That presumes that there is an informer. Even if there is an informer, if he goes to the court and swears, that amounts to starting a prosecution. But what about action taken on newspaper reports etc. The prosecution does not necessarily commence after a charge is framed. It is only in summons cases that a charge is framed in the first instance.

MR. M. SIVATHANU PILLAI : I do not mean trial Could not the court make an enquiry in regard to information placed before it by a person? For instance the court may ask the informer to make the statement on oath before it proceeds further.

MR. P. S. NILAKANTA AIYAR : I thought there was no room for any doubt One is upon complaint and the other is upon information laid before the court.

(At this stage the Deputy President left the Hall and Mr. E. Subramonia Aiyar took the Chair.)

That is the distinction. I thought that the departure from the language of Section 170 of the Criminal Procedure Code was with a distinct purpose. I thought from the ordinary meaning of the amendment, information laid means information laid from whatever source it might be. It may be hearsay or even a newspaper report in the course of which the matter is disclosed. That is how I took it. I think I would be justified in making this inference because of the difference in the language used in the amendment and the language used in the Criminal Procedure Code. Under the latter the information should be from a definite person. But here it is not necessary that a definite person should give it. It is enough that information is laid before the court; the source of it may or may not be divulged. The source may be privileged as in the case of a police officer who is not bound to disclose the source of his information. It seems to me therefore that there is a lot of material on which the Magistrate can proceed without the safeguard of any person vouching for the accuracy of the information. Then my friend Mr. Sivathanu Pillai asked whether the person giving the information could not be examined

before the prosecution is started. I think that may not be necessary. In the case of a valid complaint in a criminal case, the examination of the complainant immediately after the complaint is made is a necessary safeguard. Otherwise nothing could take place, not even summons to the accused could be issued. Then only the case is taken in his calendar file by the Magistrate. My friend Mr. Sivathanu Pillai again preferred to an enquiry being made before the institution of the prosecution. It seems to me that on a reading of the section which is now sought to be amended it is not stated whether a preliminary enquiry is necessary. My friend stated that if the Magistrate entertains any doubt he might make enquiries. In the first place there is no compulsion upon the Magistrate to do any such thing at all. Secondly, the enquiry which my friend has in view is something analogous to what a Magistrate can do under Section 181 which enables him to dismiss a complaint if after examining the complainant he finds that there is not sufficient ground for proceeding with the complaint. Probably that is what my friend has in view when he stated that an enquiry may be made by the Magistrate before the actual prosecution starts. I think that is not possible. Because the enquiry contemplated under Section 184 arises only after examining the complainant and the result of any investigation. Here it is not possible, because the present bill does not authorise any person other than First Class Magistrates to take cognizance of the offence. It could not be sent to the Police for report as in the case of offences contemplated by Section 181. These are the two facts upon which the Magistrate is authorised to dismiss the complaint if there is no sufficient ground for proceeding after examining the complainant and the result of investigation. Of these two things, the latter is denied in the case of offences contemplated by the present Bill. I therefore fail to see any necessity for this amendment, now that all First Class Magistrates are empowered to try such cases. Thus the enquiry is not available to these Magistrates as my friend thought. That is, the institution of an enquiry is not available before the prosecution is instituted. The only other thing is the examination of the informer so that the prosecution begins straightway. The most important safeguard which the law provided originally is taken away when we say that the Magistrate can act on information. Something definite and substantial on which the Court is empowered to proceed and which is also a guarantee against frivolous prosecution has been removed by this amendment. I therefore oppose the amendment.

MR. E. SUBRAMONIA AIYAR: As per the amendment does information laid relate to the same category as complaint as is suggested by some of the honourable members? Is that the meaning intended by the mover of the words "information laid"? I should like to have it made clear. If it means on the statement made by a person before the Magistrate that to his knowledge a certain child marriage has been performed, probably the line of discussion may take a different form. So I should like to have some clearness upon the matter. Let us not be groping in the dark.

MR. PUTHUPALLI S. KRISHNA PILLAI: On a point of order, Sir. Is it a question that the honourable member puts or is the honorable member making a statement?

MR. E. SUBRAMONIA AIYAR: I am making a request to the Chair. As an honourable member of the House I may place my difficulties before the Chair so that there may be a clarification. So far as the discussion goes, I should like to know whether according to the mover or the Legal Remembrancer or any other honourable member of this house we are to take it that 'information laid' means information given by a person appearing before the Magistrate's Court and laying information or whether according to the amendment complaint is one category and information laid is some other category. As I understood it, I took it to be information received by the Magistrate from sources which he is not bound to disclose. That is how it is understood in the Criminal Procedure Code I should like to have that matter clarified at least by the Legal Remembrancer.

MR. PUTHUPALLI S. KRISHNA PILLAI: The honourable member Mr. P. S. Nilakanta Aiyar is now in possession of the House.

DEPUTY PRESIDENT: Let him finish.

MR. P. S. NILAKANTA AIYAR: I thought there was no room for any doubt. One is upon complaint and the other is upon information laid before the court.

(At this stage the Deputy President left the Hall and Mr. E. Subramonia Aiyar took the Chair.)

That is the distinction. I thought that the departure from the language of Section 117 of the Criminal Procedure Code was with a distinct purpose. I thought from the ordinary meaning of the amendment, information laid means information laid from whatever source it might be. It may be hearsay or even a newspaper report in the course of which the matter is disclosed. That is how I took it. I think I would be justified in making this inference because of the difference in the language used in the amendment and the language used in the Criminal Procedure Code. Under the latter the information should be from a definite person. But there it is not necessary that a definite person should give it. It is enough that information is laid before the court but the source of it may be divulged or not. The source may be privileged as in the case of a Police officer who is not bound to disclose the source of his information. It seems to me therefore that there is a lot of material on which the Magistrate can proceed without the safeguard of any person vouching for the accuracy of the information. Then my friend Mr. Sivathanu Pillai asked whether the person giving the information would not be examined before prosecution is started. I think that is not necessary. In the case of a valid complaint in a criminal case, the examination of the complainant immediately after the complaint is made is a necessary safeguard. Otherwise nothing could take place, not even summons to the accused could be issued. Then only the case is taken on to the calender by the Magistrate. My friend Mr. Sivathanu Pillai again referred to an enquiry

being made before the institution of the prosecution. It seems to me that on a reading of the section which is sought to be amended it is not stated whether a preliminary enquiry is necessary. My friend stated that if the Magistrate entertains any doubt he might make enquiries. In the first place there is no compulsion upon the Magistrate to do any such thing at all. Secondly, the enquiry which my friend has in view is something analogous to what a Magistrate can do under Section 181 which enables him to dismiss a complaint if after examining the complaint he finds that there is not sufficient ground for proceeding with the complaint. Probably that is what my friend has in view when he stated that an enquiry may be made by the Magistrate before the actual prosecution starts. I think that is not possible because the enquiry contemplated under Section 181 arises only after examining the complainant and the result of any investigation. Here it is not possible, because the present bill does not authorise any person other than First Class Magistrate to take cognizance of the offence. It could not be sent to the Police for report as in the case of offences contemplated by Section 181. These are the two facts upon which the Magistrate is authorised to dismiss the complaint if there is no sufficient ground for proceeding in examining the complainant and the result of investigation. Of these two things the later is denied in the case of offences contemplated by the present Bill. I therefore fail to see any necessity for this amendment, now that all First Class Magistrates are to try such cases. Thus the enquiry is not available to the Magistrates as my friend thought. That is, the institution of an enquiry is not available before the prosecution is instituted. The only other thing is the examination of the informer so that the prosecution begins straight way. The most important safeguard which the law provided originally is taken away when we say that the Magistrate can call for information. Something definite and substantial on which the Court is empowered to proceed and which is also a guarantee against frivolous prosecution has been removed by this amendment. I therefore oppose the amendment.

MR. C. JEBAMONY NADAR: Sir, I support the amendment. The amendment prescribes a period within which the complaint has to be filed and also the manner in which it has to be filed. So far as the period is concerned, I think those who oppose the Bill must thank the mover of the amendment rather than find fault with him For, so far as crimes are concerned, once a crime is committed it is a crime for ever. Even according to the penal code limitation is a matter of exception rather than of the rule. For offences committed, mostly there is no time limit within which the complaint could be filed. But here I find that as a matter of favour a period is fixed so that beyond that period no complaint can be filed. So this is a matter which should satisfy those who oppose the Bill.

MR. P. S. NILAKANTA AIYAR: Is the member aware that lesser periods of one month and three months are prescribed in the criminal procedure code ?

CHAIRMAN: Under the limitation regulation.

MR. C. JEBAMONY NADAR: Yes.

MR. P. S. NILAKANTA AIYAR: So that it is not a question of favour.

MR. C. JEBAMONY NADAR: If it is a question of no time certainly a time limit is a favour. When in the case of other offences the complaint can be filed even after a hundred years, here a time limit is prescribed. If a person is able to keep the child marriage undisclosed for one year then he is safe.

MR. P. S. NILAKANTA AIYAR: If the honourable member thinks that the prosecution may be instituted even after one year, may I know why he did not bring in an amendment to increase the period?

MR. C. JEBAMONY NADAR: If the honourable member himself brought such an amendment as he suggests I would certainly have supported it. So, I leave it to the honourable member rather than to myself.

In regard to the filing of complaints, we have similar provisions in the Criminal Procedure Code.

MR. N. RAMAKRISHNA PILLAI: May I know whether in the opinion of the honourable member it will not be better for the prosecution to follow soon after the marriage instead of waiting for some time?

MR. C. JEBAMONY NADAR. Yes Sir, But there are people who are intelligent enough to hide facts so that even their neighbours may not know about it for months together.

MR. M. SIVATHANU PILLAI: Then, in that case, is it the member's view that time should be allowed for prosecution?

MR. C. JEBAMONY NADAR: My point is that none should be allowed to defeat the provisions of law. It is only when the public comes to know of the matter, information could be had for putting in a complaint.

MR. P. S. NILAKANTA AIYAR: Is the Member aware that unless a prosecution is started immediately it is very difficult to get evidence in regard to the complaint? Will it not be hard on the accused if the time-limit is extended?

MR. C. JEBAMONY NADAR: Time cannot affect a case like this, for, so long as the married couple are together, the very fact that they live together is sufficient evidence. If they are separated, then you can say that there is difficulty. But in that case the object of this legislation is achieved at least partly. My position with regard to the matter is this: The Code of Criminal Procedure is in existence not only in British India but in other Indian States as well. In all those places complaints are taken cognisance of by a First Class Magistrate. He is entitled to do so even on information. There are sufficient safeguards in law to see that nobody is accused unnecessarily. If the court finds that the complaint is a vexatious one, compensation is awarded to the accused. This state of law has been found to be satisfactory during the past, not only here but in other countries as well. What

then is the need for additional safeguards in this particular matter? Take again the civil side. Any individual may file any suit against anyone if he is so inclined. For instance, if somebody files a suit for a lakh of rupees basing his claim on deliberate falsehood what law can prevent him from so doing?

MR. P. S. NILAKANTA AIYAR: In order to file a suit of that nature, is the member aware that a huge amount is necessary for payment as court fees?

MR. C. JEBAMONY NADAR: Yes Sir. I am also aware of suits being filed in forma pauperis. As I understand the honourable members who are against the amendment, they want further, that some qualification should be prescribed for the complainant. We know as a matter of fact that it is not the qualification of the complainant that counts but it is the merit of the complaint. Suppose we prescribe the qualification that the complainant should be a Brahmin. Difficulties would arise. Next day the accused might come before the court and contend "that the Brahmin in the section means a Brahmin belonging to the subject to which I belong, the complainant's sect can have no intermarriage with mine and that he does not belong to the section to which I belong and therefore this complainant has no locus standi and let therefore the complaint be dismissed". It is a question of fact which the learned Magistrate could decide only on evidence and may have to divert his attention to this side issue which may develop into an elaborate enquiry ranging over a long period. The main question must lie over all this while. Therefore, my point is that so far as the complainant is concerned no qualification need be prescribed.

MR. P. S. NILAKANTA AIYAR: Is the member aware that the amendment does not suggest any qualification being prescribed for the complainant, but only about the complaint itself?

MR. C. JEBAMONY NADAR: I have in view amendment No. 10 which requires 5 members of the community to figure as complainants.

Now I would proceed to another part of the amendment *i. e.* court starting enquiry on information. It may be in the nature of a Police report or from other reliable sources. We find a similar provision in the Cr. P. C. There might occur cases in which the offenders might be clever enough to win over probable complainants. This possibili y of evading law is avoided when courts are authorised to act on information in appropriate cases. Legislation must take note of even the remotest possibilities. With due deference to the honourable members of this House who oppose the amendment, I think this part o the amendment has also to be retained and that there is no room for anxiety.

MR. E. SUBRAMONIA AIYAR: May I ask the honourable member whether a complaint is absolutely necessary for instituting a prosecution and that under the Criminal Procedure Code whether it is not a fact that a Magistrate of First class is allowed to take cognisance of particular cases only?

MR. C. JEBAMONY NADAR: It being true that complaints are necessary in a few class of cases the power of the first class Magistrate to take cognisance on information extends to cases other than these. If the law demands complaints in certain cases and not in others it is based on certain principles. If the act complained of affects individuals only as distinguished from society, then the right of complaining is limited to individuals. In offences against society at large any one may come forward either as a regular complainant or may convey the information to the authorities even in an informal way. Herein comes the need for acting on information. Now what is the principle involved in this Bill? One section of society wants to perform child marriage. There is the other section which says that it should be forbidden. So when the act prohibited in the Bill is committed the people who are really aggrieved are those who are against child marriage. They form the majority of the public. So the right of complaining must vest in the public at large. Hence any information in any form must be deemed sufficient. I think that this must be the correct view, because the effect of passing this bill would be that this practice however immemorial it might be is injurious to the present society.

Another aspect of the matter in Mr. Subramonia Iyer's speech is his personal and sentimental appeal to the house. Hence I regard it a misfortune to differ from his views.

MR. P. S. NILAKANTA AIYAR: May I know from the member from which part of Mr. Subramonia Aiyer's speech he inferred that it was one of sentiment?

MR. C. JEBAMONY NADAR: When I said speech I did not confine myself to a part of his speech. I listened to his whole speech and came to the conclusion that it contained more of sentiment than of legal elucidation.

MR. E. SUBRAMONIA AIYAR: Is it not a fact that if a piece of social legislation were enacted it should be representative of various interests and in the interest of the community?

MR. C. JEBAMONY NADAR: Ordinarily that is the correct position. But my own view of the matter under debate is that it is neither communal nor merely social.

MR. E. SUBRAMONIA AIYAR: Is it the member's suggestion that when a legislation is proposed to be passed as a law, safeguard should be provided to protect the interests of certain communities who are in a minority?

MR. C. JEBAMONY NADAR: Yes, Sir. Under ordinary circumstances where a legislation is passed, every protection should be afforded to safeguard the interests of minorities. That must be the general view to be kept up. But I may be excused for stating one exception. Supposing a set of people come and say that persons belonging to their community should not be punished for theft, are we to agree to that proposition? Are we to change the penal code? In my view therefore

the question of minority does not arise in matters penal Considering the stage of the Bill we have to take it that the society at large requests this House to pass this measure in the interests of the country as a whole?

MR. E SUBRAMONIA AIYAR: May I know whether a child marriage as such is made an unlawful act like theft in the Penal Code?

MR. C. JEBAMONY NADAR: I concede that it is not express.

But as I understand the local case law, when the legislature prescribes a penalty for an act in law, it amounts to a prohibition of the act.

Now I would proceed to another point. First Class Magistrates are responsible officers and they could be safely trusted for trials under this law. They must realise their responsibility to the public. If a Magistrate acts maliciously, he can be taken to task. Usually they are experienced men.

MR. P. S. NILAKANTA AIYAR: May I know how many experienced persons have been appointed as First Class Magistrates for the trial of these cases in a limited time?

MR. C. JEBAMONY NADAR: There is no time limit prescribed. It is a question of promotion and depends on the competency of the individual concerned.

MR. P. S. NILAKANTA AIYAR: Are there not cases of First Class Magistrates who have been invested with first class powers within a year or two of their appointment as such?

MR. C. JEBAMONY NADAR: That depends upon the supposed competency of the individual officer. Magistrates, if and when they function maliciously will have to suffer, at the hands of Government and the public as represented by the legislature.

MR. P. S. NILAKANTA AIYAR: Does it not show that the Magistrate has not become sufficiently an experienced officer to discharge a responsible duty?

MR. C. JEBAMONY NADAR: If a Magistrate is not exercising his powers properly, there are different ways to seek redress. General insinuation is an insult to all the existing Magistrates and to those who are likely to become Magistrates in future. The object of punishment is to improve the culprit who is a member of society. There have been First Class Magistrates not only in Travancore but all over India exercising such functions. I do not see any reason why the amendment should not be accepted.

MR. E. SURRAMONIA AIYAR: May I know from the member whether in India or elsewhere these Magistrates were exercising jurisdiction in a case in which the statute has no jurisdiction?

JEBAMONY NADAL: Not as a rule but as exception.

MR. E. SUBRAMONIA AIYAR: Is it the suggestion of the honourable member that Magistrates who try such cases in British India or elsewhere by Statutes have got jurisdiction over them?

MR. C. JEBAMONY NADAR: Power is given by Statute. There are also special enactments under which certain powers are given to different Magistrates.

MR. E. SUBRAMONIA AIYER: Is the honourable member aware that so far as Criminal Procedure Code is concerned, practically and substantially, Magistrates can proceed upon information supplied only in cases where the offences are non-cognizable?

MR. C. JEBAMONY NADAR: Cognizable and non-cognisable are peculiar to the Criminal Procedure Code. What the honourable member says is correct to that extent.

MR. E. SUBRAMONIA AIYER: My suggestion was that the policy uederlying the Criminal Procedure Code was to give the Magistrate power to initiate prosecution only where cases are investigated. I was only pointing out the policy. Is it the suggestion of the member that so far as this matter is concerned that policy should be followed?

MR. C. JEBAMONY NADAR: So far as I should think, the very same policy should be followed here also, except to the extent modified by the Bill. If the Police investigate cases it is because those are offences affecting society. This Bill I presume, deals with an act affecting the society at large, and as such, the provision for information to the Magistrate is very necessary because under this enactment we do not give any express power to the Police to investigate.

MR. E. SUBRAMONIA AIYER: Is it the view of the honourable member that child marriage is more heinous than adultery and bigamy?

MR. C. JEBAMONY NADAR: My humble view is that the one is as bad as the other.

MR. E. SUBRAMONIA AIYER: Is the honourable member aware that in the case of adultery and bigamy the Magistrate cannot take cognisance of the offence on mere information?

MR. C. JEBAMONY NADAR: I am not quite sure of the position of law in regard to that matter.

MR. E. SUBRAMONIA AIYER: Will the honourable member refer to the Criminal Procedure Code and verify the matter?

MR. C. JEBAMONY NADAR: I am not now in possession of the Procedure Code. As soon as I go home I shall do it to respect the advice of my "Guru".

DEPUTY PRESIDENT: You may now attend to the business before the House.

MR. C. JEBAMONY NADAR: Magistrates have been exercising this power all along. If they do not exercise that power properly, then as I said before there are other means of dealing with them. I do not presume that any first class magistrate is so foolish as to start a prosecution as soon as he gets any piece of paper or any shabby information.

One argument advanced by Mr. E. Subramonia Aiyer was that this provision was like giving an over doze. But I say that in this particular case there is no harm in an over doze. We want to kill the evil practice, if it cannot otherwise be cured. Just as we do away with mosquitoes or stray dogs we desire to deal with this practice.

Another argument was that we are blindly following the British Indian Act. I do not understand it like that. We follow almost every other law of British India. Let us take our Law of Contracts and our masters of law of the Madras University on that subject. They cannot be discarded merely because they are the products of a British Indian University. The Amended Saradha Act is in force in British India. Even after the Congress Ministry has come into power it has not dared to make any change. That means that it is in accordance with the popular wish.

MR. M. SIVATHANU PILLAI: Does the honourable member know that Mahatma Gandhi is deadly against child marriage?

MR. C. JEBAMONY NADAR: Yes Sir, and I wish that those members of the particular community who now oppose this Bill change their outlook on sentiments.

MR. E. SUBRAMONIA AIYER: Does the honourable member know that Mahatma Gandhi is more a politician than an acquirer of old traditions and culture?

MR. C. JEBAMONY NADAR: Eminent in everything ideal. We have heard of inter-communal marriages among families occupying the fore front in Indian society. Son and daughter of eminent men are united in marriage giving the death blow to communalism and sentimentalism. I may refer to a case of History. A pious Brahmin Rev. Davidson was the pastor of the L M. S. church at Nagercoil. He preached against child marriage. As a man belonging to the London mission, I was thus taught by a Brahmin that child marriage was a social evil which has to be avoided. If I support the Bill it is because of the respect which I have for that Brahmin's teaching.

MR. E. SUBRAMONIA AIYER: Does the member know that when the fresh waters of a river joins the sea it also becomes saltish?

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I rise to point of order. Members are speaking amongst themselves and not addressing the Chair, which very often prevents us from following what is taking place n the House.

DEPUTY PRESIDENT: Members should take notice that they should not talk to each other but should address the Chair.

MR. JOSEPH VITHAYATHIL: Sir, when Mr. E. Subramonia Iyer put the question, evidently, the implication was that when the Brahmin becomes a Christian it is something like the good water of the river joining the saltish water of the sea.

MR. E. SUBRAMONIA IYER: Sir, a word of personal explanation. I should not be misunderstood in that sense. I am of the view that saltish water is more useful than fresh water. I merely gave an example to show that the custom of one community will not remain as it is when it becomes part of another community. It does not make any

distinction between one man and another. I did not mean any disparagement or discredit to any community. If I caused any ill-feeling to any of the honourable members, I most humbly withdraw the statement and tender my apologies for the same.

MR. C. JEBAMONY NADAR : Sir, I have said enough in support of the amendment which in my view deserves a place in the statute under consideration. Else I might become saltish I resume my seat by commending the amendment to the unanimous acceptance of the House.

MR. N. RAMAKRISHNA PILLAI : I oppose the amendment. I should have thought there is no justification for interfering with the life of a community as it is the duty of the State to see that the health of the citizens is maintained and that minors, lunatics and disabled people should be taken under the protection of the State. It is only on that principle that such a legislation would be justified. Taking that view I should think that the offence should have been treated as an offence against the State. This piece of legislation is not brought forward by Government. It is a private piece of legislation. The State itself does not recognise the evils of the practice. This legislation is introduced at the instance of a private individual and as such the only inference that can be drawn is that it is a legislation intended to effect a social reform. The communities that are to be affected by this legislation do not come forward to support it, On the contrary, we find that the community most affected by this piece of legislation is the foremost in opposing the measure. In regard to the other provisions of the Bill it will be seen that the offence created under this Bill is not an offence which affects the whole community but only one particular community. There are several means of prosecution under the Criminal Procedure Code. There are prosecutions which can be initiated only on complaint by an aggrieved party or only on information in certain circumstances. But what do we find in British India? The proposal that is suggested by the amendment is that the prosecution should be started on the complaint of anybody. It need not be on the complaint by the aggrieved person. You will find that the act itself is not an offence under the Regulation. Suppose an offence under the Regulation should be proceeded with and the prosecution should be started at the instance of anyone among the public. It is not restricted to any member of the community or to the aggrieved party. Now what is the principle underlying such a prosecution? Is it a prosecution intended to protect the interest of any particular person or body of persons? The expression "information laid before it" is open to objection in several respects. In the first place can it be said that the Magistrate received any information ? Is it an active step or only a passive one in the sense that the Magistrate has received information from some quarter or other. I think there is absolutely no justification for initiating prosecution apart from a complaint from the aggrieved party. In the present case the amendment seems to introduce another means of initiating prosecution. Now what is the justification for introducing another means of initiating prosecution under the Regulation ? We find that in Civil Procedure Codes. there are several ways of initiating a prosecution. Under this amendment the prosecution can be started on the application of anybody.

DEPUTY PRESIDENT: Order, Order. Will you take up some more time to finish?

MR. N. RAMAKRISHNA PILLAI: Sir, I may require some more time.

DEPUTY PRESIDENT: Then the House will now adjourn for lunch to meet again at 2. P. M.

The House adjourned at 1. P. M.

The Assembly met after lunch with the Deputy President in the Chair.

MR. N. RAMAKRISHNA PILLAI: Any member of the Public is at liberty to initiate a prosecution under the provisions to punish him if it is not a bonafide one. But here for a complaint made by an aggrieved person there is absolutely nothing to prevent him from doing so. I cannot regard the provisions here as a safeguard against indiscriminate prosecution. On the contrary the amendment will give another way to initiate prosecution; that is, by giving information only by any member of the public. My objection therefore is that there is absolutely no need to introduce any further right to initiate prosecution than what is in existence in the Penal Code. Above all the amendment means to extend the time for prosecution. It is said prosecution can be started within one year of the marriage. Such a long period of time should not be given to initiate a prosecution· I submit therefore that in this particular instance it is necessary for the accused to produce evidence even after one year, There are provisions to the effect that the burden of proof falls upon the accused. It is the duty of the accused to prove that he was not a party to the marriage. In such a case it will be highly inimical for him if the period of prosecution is extended to one year because he will not be able to adduce evidence in favour of him. Considering all these aspects I think it is highly unjust if this amendment is accepted and so I cannot support it. With these words I oppose the motion.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, as was pointed out by some Honourable Members, this amendment, if carried, would bring about two changes in the existing clause. One is in regard to the method by which offences of this nature can be taken cognizance of by a court. The second is in regard to the period of time prescribed for starting prosecution. It must be remembered that the original of this bill, that is, Act XIX of 1929 underwent vast and varied changes within 9 years since it came into law. It was observed by one honourable member that we are not to be guided by what the British Indian Legislatures do and that we should guide ourselves by our own principles which appear to us reasonable and sound. I concede that argument; but one thing must be remembered. We are not entitled to ignore the experience of a big State like British India and that the original Act XIX of 1929 was worked there for a period of 9 years Public opinion there has shown that Section 8 corresponding to clause 8 was not found to be working satisfactorily in British India. As they found it ineffective they changed it. There was a particular reason why it was found to be ineffective.

It was pointed out that in regard to marital offences the law provides that there shall be a complaint preferred by some aggrieved party. This legislature proposes now to deal with this matter on an entirely different footing even though it is a marital offence. One great difference between this marital offence and other marital offences is, that in the case of every other marital offence there is one aggrieved party. Take the case o; bigamy. A husband is prosecuted for the offence. That necessarily implies that there is one aggrieved party namely his wife. There is absolutely no harm in thinking in that case that this aggrieved person could prefer a complaint. Then again in the case of adultery there is a husband who is an aggrieved party. If it is the husband who is an offender there is the wife who is the aggrieved party. In all these cases there is an aggrieved party contemplated. In the case of other marital offences, like enticing or taking away or detaining with a criminal intent a married woman, then also there is an aggrieved party. The law says if that aggrieved party prefers a complaint the court shall take cognizance. Here in this case it is also a marital offence but in the strict legal sense it is not a marital offence. As was pointed out by the honourable member Mr. E. Subramonia Iyer the law does not treat marriages between minors as unlawful. It is an offence more against the public weal than an infraction of any marital relationship. So it is not exactly a marital offence. The issues born of such couples are not illegitimate. It does not bring any disharmony in the circle; but nevertheless the law does not favour it. But at the same time the law is not able to prevent a vast majority of such alliances. In 98 cases out of 100 such marriages take place at the instance of persons who have absolutely nothing to do with the marital aspect of the union. In all these cases this marital offence would not come into existence but for the convenience of such persons. Therefore the law says we will deal with such persons. In the case of persons who are of marriageable age the law says we will have a hold on them also. That is the exact position of law here. Therefore in this particular case I was anxiously trying to hear some argument what class of persons should complain against the offence. The law says "you shall not perform such a marriage. Is there anybody else to say so? Is there any person aggrieved by the celebration of such a marriage? So the class of aggrieved persons whom the law contemplated for the purpose of other marital offences cannot be thought of in this case because there is no individual who could be said to be aggrieved.

MR. E. SUBRAMONIA AIYAR: Is it the view of the honourable Legal Remembrancer that the feeling that the child marriage is an evil is not so strong in Travancore as to make it impossible for a few people to come forward and complain if, as a matter of fact, a child marriage is performed, so much so this Act or this Bill must be necessarily made something like a quarantine Act or a sanitary Act. To make myself clear, if the view of the Legal Remembrancer is this that the feeling for this reform is not so acute and not so strong as to induce all those zealous people to come forward and to complain of the

evils of child marriage, is it the view of the honourable member that we are to create an opinion for that purpose or leave it to the public officers to put into effect such a reform?

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I was coming to that point and if my honourable friend would have waited for a few minutes he would have heard my views So far as this offence is concerned you cannot contemplate an aggrieved person. My friend asks me whether it is not possible to contemplate public spirited men who might bring to the notice of the court the infraction of law committed by a body of persons in the village.

MR. E. SUBRAMONIA AIYAR: Sir, an explanation. If the feeling that this is a reform is strong enough do you not expect zealous people to come forward and correct him.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, my friend who knows very well the several provisions in the Criminal Procedure Code might agree with me that every good citizen is bound to help in the detection and prevention of offences. In spite of this the Criminal Procedure Code casts some obligation on land holders and villagers and the public in general. If the offence is committed within a village or to any person's knowledge, the Criminal Procedure Code provides that he is bound, on pain of conviction, to inform the police or other authorities about it. Theory is one thing, but the practical aspect is another thing. Now, my friend says: 'If the feeling of the public is not so much against the celebration of such a marriage why should you be troubled with this legislation? I think I have very little to say on that question. Personally, I do not propose to supply any information whether the majority of the people are, or are, not in favour of this legislation. It is a matter for the House to decide. As Legal Remembrancer to Government I am called upon to explain what I myself feel in regard to the controversy that has been raised in this matter.

As I pointed out, you cannot conceive of an aggrieved person in this case. Sections 170 to 176 of the Criminal Procedure Code deal with specific cases which are made cognizable only at the instance of certain class of persons.

MR. E. SUBRAMONIA AIYAR: Does the honourable member feel it necessary that a set of persons styled 'marriage inspectors' or 'marriage investigators' be appointed by the Government, so that this vitally important law may be enforced? Does the honourable member think that 'marriage investigators' should be appointed to see that this law is completely put into force?

MR. PUTHUPALLI S. KRISHNA PILLAI: So far as my information goes Sir, there are Factory Inspectors proposed by Government to look after the factory affairs, and as this Bill has not yet come into law and as Government themselves are not made aware of the general tendency on the part of any community to disobey the law that is to be enacted, Government are not in a position to consider this question. If it so happens that this House passes this legislation and often power for the purpose is vested with Government, if it is brought to the notice of

the Government that any community or any large section of the people disobey the law. I am quite sure, Government will take such steps as they deem necessary.

DEPUTY PRESIDENT: You mean to suggest that in case of continuance of infringement of the law amendment of the law will be considered.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes.

We cannot conceive of a person who is particularly competent to decide whether a case ought to be lodged. There is no body of persons particularly competent to advise or to inform the court or to prefer a complaint about an offence of this nature. Another class of cases referred to by Mr. E. Subramonia Aiyar is in respect of offences committed by Government servants who are not removable from office except with the orders of the Government. It is emphasised that in the case of such officers proceedings could not be taken against them unless sanction from the Government is obtained. Is it possible to conceive of an analogous procedure in the present case? There cannot be any aggrieved person; there cannot be an authority who is competent to investigate this matter and decide whether a prosecution can be lodged. There is no authority under whose protection or direction the marriage is celebrated.

MR. E. SUBRAMANYA AIYAR: One question, Sir. Is it the view of my Hon'le friend that there must always be an aggrieved party in order that the power to initiate a prosecution may be vested in a person other than the Magistrate?

Does the Hon'ble member know that all legislatures elsewhere have enacted that prosecutions shall be initiated only if a law is set in motion by persons who are called informers, even in cases where the informers are not aggrieved?

MR. K. R. RAMASUBBA SASTRI: I may also put a question Sir.

DEPUTY PRESIDENT: Let him answer the question already put.

MR. PUTHUPALLI S. KRISHNA PILLAI: In regard to certain matters where the State is the aggrieved party, what is ordinarily done is to make such cases cognizable. If it is the honourable member's view that this is an offence which may be made cognizable, I think all the difficulty is solved. But the mover does not propose to be so ambitious. After all, the State need not be connected with this matter. If any person from the public comes forward, the court may decide. That is the distinction I draw between cases in which there are aggrieved persons and where there are no aggrieved persons. If in this particular case, any honourable member could point out the authority or the institution which will be in a better position than the general public or the State, we could provide that no case shall be taken cognizance of by the Magistrate except upon complaint lodged by such and such persons.

MR. K. R. RAMASUBBA SASTRI: Sir, one question. May I know, whether in the case of persons who believe that there is a divine command to perform this child marriage, it would not be prudent on the part of the Government that prosecution should be launched by the Government or by responsible officers entrusted by Government with the trial of the case?

MR. PUTHUPALLI S. KRISHNA PILLAI: That is again going back upon the principle which we have adopted. Apart from the religicus scruple of individuals or communities, the legislators think that it is a matter which must be put in the forefront of all those scruples. It is a matter which ought to be penalised. If we have adopted that principle or provision, where is the force in the argument that persons who are swayed by religious feelings are prone to commit offence under this Act. I cannot clearly understand the force of such an argument. If it is an offence, apart from religion, apart from your community, apart from the custom or personal inclination, it shall be treated as an offence. What is the method of dealing with this matter?

MR. P. S. NILAKANTA AIYAR: Would it not be better to introduce such officers to give effect to the provision of this Bill rather than introduce such amendments?

MR. PUTHUPALLI S. KRISHNA PILLAI: I do not quite follow, Sir.

MR. P. S. NILAKANTA AIYAR: Sir, the Legal Remembrancer said that it is better to wait and see whether it is necessary to appoint Inspectors in respect of offences committed under this Regulation. Would it not be better to wait and see whether a legislation is necessary in this matter by amending the suitable provisions of the Criminal Procedure Code. I ask, whether it will not be more expedient to appoint the Inspectors to make a report rather than introduce an amendment at this stage?

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I did not make such a statement. When my friend Mr. E Subramonia Aiyar referred to the question of appointing 'marriage Inspectors', I said "there is one Statute in which an Inspector's appointment is sanctioned. There are others as well. If the persons affected insist that Inspectors should be appointed, it might be done, but I am not at present concerned with the details of the question.

All that I therefore say is that in the absence of any class of persons who are particularly competent to launch the prosecution or to bring these matters to the notice of the court and in the absence of persons who come forward as complainants before the Court, I think the Magistrate, as the Mover proposes, must be in a position to start a prosecution on information laid before him.

As I pointed out, Act XIX of 1920 which provided for offences being taken cognisance of one upon complaint has been found to be thoroughly insufficient to meet the ends of this piece of legislation; nine years' experience has proved that. It is not, as my friend Mr. Nilakanta Aiyar put it here today, that there is only one community, namely, the Brahmin community which was affected in British India by the

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Sarda Act. After all, it was open to members of his community as well as every other community to launch prosecutions. It is not necessary that a prosecution should always end in conviction; prosecution need not always be genuine or true. As I submitted, it is quite open to members of my friend's community also to launch a prosecution against a Mahommedan for instance, and obtain an injunction just before the day of marriage, restrain the marriage and cause immeasurable loss to the parties to the marriage. It is open to my friend, if he finds that in his neighbourhood a Mahommedan girl of fifteen is going to be married to a Mahommedan youth of nineteen, to put in a complaint and prevent the marriage. Who can say that he has not got the opportunity to do it? Therefore, to argue that the Brahmin community will form the butt end of prosecutions by members of all the other community is a proposition which I cannot subscribe to. It is not reasonable to suggest that the members of every other community are anxiously awaiting the beat of the drum or the sound of music in the marriage pandal of a Brahmin house, so that they can immediately rush to the Division First Class Magistrate of the locality and pray that the marriage should be stopped. At any rate, in the generality of cases, no such thing would happen. Even if it happens there are several ways of retaliation open to the members of my friend's community; half-a dozen samaritans of my friend's community may form themselves into an association and go about launching prosecution after prosecution against the parties to the marriages in every other community.

Sir, my friend Mr. E. Subramonia Aiyar, in his amendment says that, in order that a complaint can be filed, there should be at least five persons all belonging to the community to which the parties to the marriage belong.

MR. P. S. NILAKANTA AIYAR: Sir, are we at that amendment? I was told we are not.

MR. PUTHUPALLI S. KRISHNA PILLAI: I am at the amendment which is now being discussed, namely, whether the action can be only on complaint or whether it can be also on information laid. The British Indian legislature has tried the provision that action should lie only on complaint; that provision has proved to be inadequate. That is why they have now added "on information laid". Sir, although it seems to be apprehended now that every member of every other community is waiting for this Bill to become law so that he might launch prosecutions against Brahmins who celebrate marriages, I do not think any one who has anything of his own to do would really think of interfering with his neighbour's affairs. I do not see what really I have to do with a marriage celebrated in my friend Mr. Nilakanta Aiyar's house. Unless I have absolutely nothing of my own to do, and also have other people's money about which I have absolutely no responsibility, I am quite sure I would only sit at home, read my books and attend to my work. Why should I go about launching prosecutions against persons who perform child marriages?

MR. N. RAMAKRISHNA PILLAI: May I ask who is interested in eradicating child marriage?

MR. PUTHUPALLI S. KRISHNA PILLAI: Society at large. I ask, Sir, how many of the sixty lakhs of people in Travancore are bent upon seeing that this evil of child marriage is completely eradicated, especially when these prosecutions involve a certain amount of pecuniary expenditure? You cannot certainly expect an ordinary man to go to a court of law, prefer a complaint, wait upon the court, see that summons is issued, pay a lawyer, and undergo all the difficulties merely for the purpose of seeing that Mr. Nilakanta Aiyar is brought to book, unless it be that he has some private animosity against Mr. Nilakanta Aiyar. On the other hand, if a marriage is performed at Trivandrum and my friend Mr. Vaikom Ramakrishna Pillai happens to be living at Vaikom and hears of the child marriage performed here, he may being very much interested in the eradication of the evil of child marriage, spend three quarters of a chuckram and write to the Trivandrum First Class Magistrate that on such and such a date a child marriage was performed at Trivandrum and that such and such persons were parties to the marriage. That is what we might call "laying information before the court". On such information the Magistrate would make enquiries, take the case on his file and proceed with the prosecution. Notice may also be issued to Mr. Vaikom Ramakrishna Pillai; but he is under no legal obligation to substantiate his statements. We may take it that the Magistrate will proceed on the information received by him only if he finds on enquiry that the information is all true. On the other hand, in addition to pecuniary investment in the case of a formal complaint there is the risk not only of compensation under the Criminal Procedure Code but also of a prosecution for defamation. I ask, Sir, how many are there willing to put themselves into that situation for the purpose of eradication of this evil? We all know that every day, around us, hundreds of offences—cognizable offences—are, being committed. But how many of us have taken care to inform the authorities, the Police or the Magistrate, of such offences. Sir, we are all old men, sufficiently old, and during this long period of our life we must surely have come across ever so many instances in which offences have actually been brought to our notice but about which we have never cared to inform the authorities. That is the generality of human conduct even in respect of more serious offences. Is it the expectation of this legislature that everybody in this country should start prosecutions or should bring to the notice of the authorities every infraction of every rule of law enacted here?

MR. N. RAMAKRISHNA PILLAI: Is it right that, without incurring any responsibility whatsoever, people are allowed to lodge complaints?

MR. PUTHUPALLI S. KRISHNA PILLAI: In the case of complaints' certainly, the complainants have very serious responsibilities. But, in the case of a cognisable offence, who has got the responsibility?

MR. E. SUBRAMONIA AIYAR: May I ask whether, under the law, if ultimately the prosecution case is proved to be unfounded and malicious, the person who gave information to the Police is not liable to pay compensation ?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, in some cases.

MR. E. SUBRAMONIA AIYAR: May I ask further whether, the Magistrate is bound to disclose the source of the information which has led to the prosecution, so that when such information has been proved to be false, the informer could be proceeded against ?

MR. PUTHUPALLI S. KRISHNA PILLAI: No. But we can ordinarily expect that responsible officers of Government would exercise their discretion, make the necessary enquiries, satisfy themselves as to the *bona fides* of the informer and then alone start the prosecution. The mere fact that some information has been conveyed to the Magistrate does not mean that it would mature into a prosecution. If a person, knowing all the risks involved, leaves all his business, goes to the authority and gives some information, and also swears on oath as to the truth of such information, we can naturally infer that it is a fit case for enquiry by responsible officers like Magistrates. In fact that is what we mean by "information laid".

I am sure every honourable member of this House would realise that all that is contemplated by this measure is to afford larger facilities for prosecution of offenders under this Bill. As I submitted, it has been found in British India that a large number of cases escaped the clutches of law because of the insistence upon formal complaints.

MR. E. SUBRAMONIA AIYAR: Will the honourable member be good enough to enlighten the House as to the reasons which induced the British Indian legislature to adopt this change ?

MR. PUTHUPALLI S. KRISHNA PILLAI: I do not know, Sir, probably, their reasons were faulty; I am now advancing my own arguments, and it is open to the honourable House to reject them if it finds them not acceptable.

MR. E. SUBRAMONIA AIYAR: Is it not because all enthusiasm on this matter ceased with the mere passing of the enactment and publishing it; and when it actually came to a question of preferring complaints and doing some work, no one was really found forthcoming ?

MR. PUTHUPALLI S. KRISHNA PILLAI: That may be. In this matter, since there is nobody who is personally aggrieved, you cannot expect anyone to come forward with a complaint. If, on the other hand, a person trespasses into my compound and takes away my cocoanuts, I naturally feel aggrieved and prefer a complaint. Similarly, if I am assaulted, I have a personal grievance On the other hand, in regard to child marriage, what is my grievance except the general feeling that every law in the State should be enforced and obeyed. How many are there, I ask who are actuated by that high sense of duty? I am quite sure even my learned friend Mr. E. Subramonia Aiyar would have come across several crimes committed to his knowledge, but naturally he did not take it into his head to inform the authorities about them

MR. N. RAMAKRISHNA PILLAI: Is not this Bill intended as a measure of social reform, so that social reformers might be expected to launch prosecutions against persons offending the law.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, it is quite open to social reformers to form themselves into associations and to launch prosecutions against persons offending this Bill. If there are such persons they will be quite welcome. The Magistrate has to act on the power which is given to him. If the offence is to be taken cognizance of only upon complaint, we cannot expect an aggrieved person to come forward in this case, unless he is actuated by malice against the individuals concerned or by a high sense of duty. In either case the number according to me will be very limited. At any rate experience shows that the number will be very limited. That means that several cases would go undetected or unpunished. That means that the Act, to enact which we are being put to so much trouble, would be rendered ineffectual. This amendment appears to be intended to enable the authorities to enforce the law that the legislature enacts. Otherwise it is likely that several persons who would be brought to book or who would be prevented from committing the offence would be allowed to perpetuate an evil which this Act intends to counteract.

MR. P. S. NILAKANTA AIYAR: Are there instances of prosecutions being launched on the letter received from somebody?

MR. PUTHUPALLI S. KRISHNA PILLAI: I had never been a Magistrate in my life and I cannot therefore say whether a prosecution has been launched on a letter received by somebody. I can only read to my friend Section 170 of the Criminal Procedure Code which is wide enough to include that contingency also. Whether a Magistrate will act on an anonymous letter I cannot say. "A Magistrate of the First Class or any Magistrate of the Second Class who is empowered by Our Government in this behalf may also take cognizance of an offence upon information received from any person other than a police officer or upon his own knowlege or suspicion that such offence has been committed." They are the powers of a First Class Magistrate or a Magistrate of the Second Class who is specially empowered by Government.

MR. P. SIVARAMA PILLAI: Is the member aware that in certain towns in British India associations have been formed by social workers to inform the Magistrates concerned about child marriages?

MR. PUTHUPALLI S. KRISHNA PILLAI. Yes. Some such things might be done here also. But the Magistrate must be competent to take cognizance on information supplied. We are at the question whether he can take cognizance of the offence only upon complaint or whether he can take cognizance of it even on information laid. That is the first portion of the amendment. The learned mover thinks that if the provision is confined to the power to take cognizance of the offence only upon complaint it will render the working of the Act ineffective or unsatisfactory. Therefore one more method by which a Magistrate can take cognizance of the offence is provided in the amendment. If this House is of the conservative view that the Magistrate shall take

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cognizance only upon complaint, then it will have to support the clause as it stands. But if this House is satisfied that there will be paucity of complainants and the possibility of well-merited prosecutions escaping the notice of the authorities and if the House thinks that an enabling provision must be made, it may support the amendment.

An argument was advanced whether there is not a difference between "information laid" and "information received." No doubt, the Criminal Procedure Code makes use of the expression "information received," but this Bill makes use of the expression "information laid." Information laid is information that is placed by somebody but information received need not necessarily be placed before the court. The difference in the dictionary meaning of the two expressions appears to me to be this. In order that information may be laid, it contemplates another human agency. Somebody lays the information before the court. On the other hand, if it is merely information received, it may be received by any means whatsoever. It need not necessarily contemplate a human agency, a third party. That appears to be the distinction.

MR. E. SURAMONIA AIYAR: Under the Criminal Procedure Code when a Magistrate takes cognizance of a case upon information received, is there not some provision that that Magistrate should not try the case and if this Bill comes into law is it the view of the Legal Remembrancer that the same Magistrate who has had information before him should try the case?

That is the reason why I brought out the distinction between information received and information laid. If he receives information he should not try the case according to the Criminal Procedure Code. But is this amendment maintaining that distinction or are we to take it that information laid means that information must be laid by some body before the Magistrate.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, Section 170 which I read just now says that a Magistrate of the First Class or of the Second Class specially empowered can take cognizance of a case upon information received from any person other than a police officer. Sir, the position is made clear that it must be information received. Here the expression used is "information laid." There the expression used is "information received from any person other than a police officer or upon his own knowledge or suspicion that such offence has been committed." It deals exhaustively with the several contingencies and leaves no room for doubt. So much may be conceded. But here the other expression also appears to be not capable of doubt. My friend Mr. E. Subramonia Aiyar put the question whether the Magistrate himself can take cognizance of that offence. That matter, I submit, must be governed by the Criminal Procedure Code itself, no special provision having been made in the present Act. As a criminal case it must be considered under the Criminal Procedure Code and the

provisions contained therein will apply with equal force to cases of this kind as well. If a Magistrate cannot go on with the trial of a case which he has himself taken on his file or which he has investigated and in which he himself will have to be a witness, the same rule will apply here also. I do not think there is any very great difficulty in this matter.

The second question is in regard to the time limit, whether it should be six months or one year. Ordinarily no time limit is fixed for a prosecution but special provisions are made restricting the period within which a prosecution may be launched. The period of limitation is fixed in order that frivolous and belated prosecutions may not be brought forward in court. Take a case in which a person may be aggrieved or a case in which a person sustains some injury. He might probably think that no prosecution need be launched. But after the lapse of some time, on account of some misunderstanding he might regret that he has lost his opportunity and then he might think of coming forward with a prosecution. The law wants to prevent such cases. Therefore it is that on some occasions in the case of certain offences the law prescribes that if a prosecution is launched it should be launched within such and such a period. Of course, my friend's complaint is that the maximum fixed under the Limitation Act for certain cases is only 90 days. The period of six months in the Bill is sought to be raised to one year by the amendment. On that question it is the sense of the House that must prevail. Personally I do not see why it should not be one year or why it should be six months. After all, if an offence is committed in respect of marrriage and if the provision is retained that the Magistrate can take cognizance of the matter on information received, any period smaller or greater may be sufficient and it is left to the House to decide what it should be. In that case, I have only one suggestion to make. The amendment itself may be split into two parts and allowed to be voted upon separately. That I think may solve the difficulty. There is no harm in doing that and the Chair has got the power.

MR. K. R. RAMASUBBA SASTRI: Sir, I beg to oppose the amendment on the following grounds. I am a slow thinker and I fear I may be a slower talker even. I would therefore request the indulgence of the House, as I have to dwell on various matters which might perhaps be not to the taste of the House. Generally in these matters people look only to the physical aspects or the material aspect of things. But I think there are much more important and serious aspects which have to be considered especially in a matter of this kind a marriage which affects not only the prospects of the parties here but also if there is a hereafter, there also. May be there are members in this House who may not be prepared to think that there is a hereafter, but before proceeding to discuss that aspect of the case I would just give the House a sort of index or compendium of the subject on which I am likely to dwell in connection with this question.

MR. M. SIVATHANU PILLAI: What does the member mean by the expression hereafter?

MR. K. R. RAMASUBBA SASTRI: I thought the term 'hereafter' was sufficiently explicit with reference to all persons who have made any study on the subject of theology. If however, there is any doubt on that matter I may say there are a new set of persons against whom theologists like myself have to fight; the so-called rationalists who refuse to believe in an existence after death or dissolution of the physical body. Therefore, 'hereafter' means existence after the death of the physical body composed of three elements according to Hindu Theology *viz.*, water, fire, and earth. In order that my friend may follow me hereafter in the theological discussion that I propose to start presently; 'hereafter' means and includes three further elements, *viz.*, life, mind and personality. I suppose that the expression is comprehensive and mystic enough to satisfy the member as well as the other members of this House. If they are inclined to listen to me, I request them to hear me. I believe that, so far as English humour goes, a Parson is defined as a person who is invisible for six days and incomprehensible on the seventh day. If that is the defintion of Theology which the English language has adopted I do not see why the Hindu theology which is perhaps considered to be even more mystic should be denied the privilege of being more incomprehensible. With this preface I will just say what the points on which I propose to confine my remarks. The amendment before the House relates to complaints made and information made with reference to a child marriage under this Act. With reference to this, five aspects have already been brought to the notice of the House by the previous speakers, Messrs. E. Subramonia Aiyar, P. S. Nilakanta Aiyar and others. Mr. E. Subramonia Aiyar referred to the period within which a complaint has to be made and whether the person making it was competent to do so. If there is any abuse in the process of law there is the Magistrate to remedy the injured person. If any malicious information is given on which a prosecution has been launched the Magistrate is expected to give a patient hearing in the matter. With reference to this I may say that this question raises a very serious question which cuts at the root of all religions, not only Hinduism but also Christianity, Mahomedanism and even Buddhism, which though a negative religion also lays down some general principles of jurisprudence like 'karma' re-incarnation and a series of re-births. This principle is common to all the religions. But there is the question of whether a male is superior to a female or vice-versa. That raises the question of superiority or inferiority complex, In these matters I think, I may say, without fear of contradiction, that all religions are agreed that the female has suffered from an inferiority complex so far as theologians are concerned. Christianity says that from rib one out of twenty four parts of His Personality a woman was created. Mahomedanism, I believe, is equally if not more against the woman folk. Mahomed says that woman is the property of the male and that the female has no voice in that connection. Anyhow Mahomedanism allows a plurality of wives. That I dare say means an inferiority complex.

[Srimati T. Narayani Amma.]

The honourable member Mr. E. Subramania Aiyar wanted the mover of the Bill to give an explanation as to whether the courts could proceed on any information laid before them. My explanation is that no court would straightaway, on receipt of information, go ahead with the prosecution; they would make the necessary enquiries and satisfy themselves that the information is reliable.

There was a dispute here as to what the object of this Bill is. The object of the Bill, as I have repeatedly said is to restrain child marriages in the State and thereby, by the inevitability of gradualness to put a stop to child marriages and make this serious social-evil of child marriages an impossibility in this State.

With regard to the period fixed, six months is too short a period; If the offenders are able to hide the offence for six months they can easily escape the provisions of the law. Hence it is that the period has been extended to one year.

With regard to the charge of slavish mentality levelled against the mover of the Bill, I might say that it is always advisable to emulate what ever that is good in others, whether it be in British India or Timbuctoo. The Honourable Member Mr. Ramasubba Sastry asks us to look to our Sister States of Cochin and Mysore where the Bill has been thrown out. May I ask whether Travancore has not justly earned the reputation of being one of the foremost States in the whole of India? I also ask him whether Travancore is not forging ahead in all directions and whether she did not take the lead in granting temple entry and whether it is not in Travancore among all other states that the Bicameral legislature was first introduced? And I may submit that, in the matter of child marriage alone, Travancore lags far behind Baroda, Gwalior, Nawanagar and some other States. When Mr. B. Das' Bill was being discussed in Indian Assembly, the following telegram was sent to the Assembly:—

The Text of the Telegram.

"As humble practical thanks giving for noble support by Government, Congress and other members to Das's Bill to stiffen sarda Act; I on behalf of our daughters and sons, offer Rs. 5000 for erecting a column on Assembly grounds for inscribing in gold names of benevolent supporters and in black of opposers for our progeny to know our saviours and destroyers. I appeal all to stop early marriage which brings sickness, weakness, tuberculosis, early death and emaciates the nation. Cheque of Rs 1000 sent to Honourable Home Member balance to follow on acceptance of proposal."

Sir, the telegram speaks for itself. The position is more or less the same in Travancore also.

I hope honourable members will appreciate the usefulness of the amendment and vote for it.

The amendment was put to vote and carried.

DEPUTY PRESIDENT: Whatever theological proposition you may expound you must make them relevant to the amendment under discussion.

MR. K. R. RAMASUBBA SASTRI: With due deference to the Chair and every body I shall make my remarks relevant to the amendment under consideration. Unless you understand the motive on which a man acts you cannot punish him for what he does. If a man acts on the highest motives possible on earth, is it proper to punish him obeying the dictates of his religion? So, much depends on the mentality you bring to bear on discussing this question in the connection. I believe most of us are aware that prayer also is a necessary instrument for the amelioration of all. Why should we pray if there is no theology at all? Much depends on the aspect of theology with reference to the conduct of human beings in this world. So I submit it is highly necessary that we understand the theology of Hinduism with reference to child marriage and its disposal one way or another by this House.

MR. C. JEBAMONY NADAR: Does the member say that we do not know anything of theology?

DEPUTY PRESIDENT: The member will try to make his observations relevant.

MR. K. R. RAMASUBBA SASTRI: Yes, I am trying to make it relevant Now what is the general principle on which a human being should guide his conduct in this world? I suppose that is a question in which we are all interested.

DEPUTY PRESIDENT: To put it so broadly is not relevant.

MR. K. R. RAMASUBBA SASTRI: I am afraid I have put in such a hard word as theology I myself am afraid whether the members may doze over the question and after all, it may mean a mere waste of time. So I shall try, as far as possible, to put it on a broad ground. I have taken one general principle. There is for all religions, what you call, one God. I will first confine myself to this, Sir. Generally, the law of limitation is the most important law, not only in this world but also in the next. So there are a few points on which all religions may be said to be agreed, that God is an infinite omnipotent Being.

MR. M. SIVATHANU PILLAI: May I know whether we are legislating for persons in this world or for persons in the other world?

MR. K. R. RAMASUBBA SASTRI: As I said before, I am concerned with both. I am inclined to the view that it is ineffective for the sake of the sex relationship, which is after all, a tiny matter which lasts for a hundred years at the most. The six months have been extended to one year. I am sorry I could not put in an amendment that the complaints may be launched after a hundred years. Then there will be no question as to the burden of proof or to the disposal of the case. If a complaint was to be put in after a hundred years that would have solved all the difficulties Is this so very important that it should

allow your relationship with the next world to be cast into nothing by the conduct in this world. That is why I appeal to all the members, if they believe in their own religion to listen to a few things comon to all religions that I am going to say. The human being is supposed to be the most important on earth. He stands above dumb creation and below God. He is the only person who is given power not only of being actuated by desire but also of controlling such desires. It is in that respect that the conduct of the human being has to be considered. According to Hindu theology, a human being has his activities in this world different at different times. I am now talking about the Manu on whose *Smritis* we are supposed to act. *Swayambhoo* Manu was the first.

DEPUTY PRESIDENT: You are going far beyond the point of discussion.

MR. K. R. RAMASUBBA SASTRI: Sex relationship is a very delicate matter which I have to deal with very scientifically so that it may not be offensive not only to the members of this House but also to the visitors who are present here to hear the discussion. As I said before with reference to this Bill there are ever so many matters to be dealt with. Havolock Ellis has to be referred to. All those authorities will be more or less undesirable in a discussion of this kind. That is why I am referring to this in a most unobjectionable manner. At least in the Select Committee I could have had a chance of pointing out the various details. Therefore I will come to the subject of the discussion after I dispose of the seven Manus. The law of limitation is the first point on which manifestiation began. We are not come to this world to enjoy.

MR. E SUBRAMONIA AIYAR: Are we not living subject to all limitations?

MR. K. R. RAMASUBBA SASTRI: That is why I said that the subject of limitation is the most important. When I come to the subject of limitation I will tell you how it acts in relationship with God

MR. KAINIKKARA M. PADMANABHA PILLAI: If the member is going to deal with theology we may sit after five O'clock. He may be called upon to speak on the subject before the House.

MR. K. R. RAMASUBBA SASTRI: Sir, I do not know why honourable members should be so very afraid of theology?

MR. KAINIKKARA M. PADMANABHA PILLAI: I am not at all afraid. I know theology as much as the honourable member and am prepared to discuss with him on that subject.

MR. K. R. RAMASUBBA SASTRI: I am not prepared to concede that he knows as much as I do. He may know what he knows. But he cannot certainly say that he knows all that I know. He may know more or less than me. I am not concerned with him alone. I am addressing the whole House. As I said, are we concerned only with the question of marriage in the material sense? Has it no effect hereafter? Are we not justified in saying that a sacramental marriage

[Mr. K. R. Ramasubba Sastri.]

affects my relationship with the future? Am I not entitled to say it here? I am not saying that the marriage should not be performed at all. It looks as if I am not allowed to talk of theology. That, I submit, is an unfair attitude. It affects all communities; not only the Hindus but the Mahomedans and the Christians alike. This proposition fits in with that of Mr. E. Subramonia Aiyar that five members of this community should try him. That, I submit is a principle of jurisprudence which has been applied from the very beginning of English history. That is, if a member of the House of Lords commits an offence, he has to be tried should be tried by 12 members of the House of Lords. If a member of the House of Commons has to be tried he should be tried by 12 members of the House of Commons. If an Indian Prince has to be tried he should be tried by 12 Indian Princes.

Honourable members of the Assembly do well know that the feelings which I express are of a large number of the members of my own community. I have already pointed out to this House that because we are in this world we are always living in an emotional atmosphere. And this emotional atmosphere has to be controlled by you by your intellect. More over if we are guided by our emotions we must also be able to know and understand the emotions of others. Really speaking emotion is the principle of conduct in this life. If we are not going to restrain and use it properly what is the use of this House where we are going to legislate laws for the well-being of all communities including minority communities. Let us be cosmopolitans in this respect. I request you to give me a hearing. You are now going to pass a bill that affects me vitally. I may not be able to muster many votes to defeat the bill. Anyhow I am thankful to the Legal Remembrancer who said that this bill is not only intended against the Brahmin community alone but against all communities.

MR. M. SIVATHANU PILLAI: May I know from the honourable member whether there is not a Brahmin community in British India where a similar bill has been passed?

MR. K. R. RAMASUBBA SASTRI: My friend is somehow or other enamoured of British India by referring to it constantly. But I ask what about Cochin and Mysore where similar bills were brought forward? Are the people of Cochin less intelligent than we are? Or the people of Mysore not sufficiently advanced in civilization? But we must be mindful of the facts that they are our sister states and it is always well for us to copy them than to copy British India. Were no measures like these thrown out in Mysore and Cochin?

MR. C. JEBAMONY NADAR: May I know whether these bills were thrown out by the legislatures or by the respective Governments

MR. K. R. RAMASUBBA SASTRI: They were thrown out by the legislatures on the advise of the Law Member of the respective States. Sir, I am again thankful to the Legal Remembrancer for assuring me that after all this bill is not intended as a threat against the Brahmin

community. But I may refer to this later on when I ask for exemption. But at present let us deal with the subject in a broad and sympathetic way. The question here is whether as human beings we do not owe allegiance to God. By being human beings we respect the rights of property and persons and the rights of marriage as well. So long as nature has not taken up that responsibility of keeping guard over a minor in regard to marital relations, the custody of the minor now rests with the parent and the parent is responsible not only to the law of the land and also to the ethical and religious laws of his being. I say let me be allowed to say a few words in this matter. Let us not in this connection throttle discussion on party considerations by saying that theology is a subject which we do not want to discuss. Sir, but the protection of a child is a much more important matter so far as this child marriage or any other relationship between sexes is concerned.

As I said before, Sir, the question of theology is also a very important matter. There is a relationship between the sun, moon and the earth.

MR. P. SIVARAMA PILLAI: I challenge that statement.—

MR. KAINIKKARA M PADMANABHA PILLAI: May I know whether the member opposes or supports the Bill.

MR. K R. RAMASUBBA SASTRI: I thought I began by saying that I oppose the amendment. To continue what I was saying, the position of human beings with reference to the power of the Sun, Moon and the earth.

DEPUTY PRESIDENT: You cannot proceed in this strain. It is quite irrelevant.

MR. P. SIVARAMA PILLAI: Sir, I challenge the statement.

MR. K. R. RAMASUBBA SASTRI: The Bhagavad Gita, the Ramayana, the Bhagavatham and Vedavyasa's Brhama Sutra all these Hindu Religious Texts assert and affirm my view.

DEPUTY PRESIDENT: But here it is a simple question which we have to consider, *i. e.*, which court shall take cognizance of the offences committed under the provision of this Bill.

MR. K. R. RAMASUBBA SASTRI: Then my submission is that the position that I shall be subjected to answer only a complaint preferred against me by at least 12 members of my community is proper.

DEPUTY PRESIDENT: This you can say by not entering into the realms of theology or philosophy.

MR. K. R. RAMASUBBA SASTRI: Sir, is not the relationship of the sexes one of theology? It is after all, a connection between protons and electrons. But Sir, the sex relationship stands on a more emotional sphere. The Hindu Sastras say that there are two sorts of beings superior to us the Rishis and the Devas. Will any honourable Member, say, that a discussion of that question is irrelevant? And the human beings subordinate themselves to the will of Rishis and Devas. These codes of conduct is embodied in the sacred literature entrusted

[Mr. K. R. Ramasubba Sastri.]

to us by such Rishis and Devas. Sir, let us take the various gradations of life and mind and the absolute principles employed in the conduct of human beings. Swayambhu Manu was the first man.

DEPUTY PRESIDENT: It is quite irrelevant.

MR. K. R. RAMASUBBA SASTRI: If what I say is irrelevant then the whole literature on Hindu Philosophy must be thrown into the Bay of Bengal. If we are not concerned with the question of sex how can we deal with a question of child marriage.

A few days ago, Mr. H. G. Wells who came to India said that great men like Gandhi, Nehru, and Bose are the products of western civilisation. A man who is an outstanding personality, an original thinker has given a slashing criticism on our culture and civilisation, because of our politics and sociology.

MR. M. SIVATHANU PILLAI: May I know whether Mr. Wells wa in favour of child marriage?

MR. K. R. RAMASUBBA SASTRI: As I said Mr. Wells said that the civilisation of India is a cheap imitation of the west.

MR. E. SUBRAMONIA AIYAR: Is the member aware that the Mandal in the Sind enjoins that women should remain unmarried?

MR. K. R. RAMASUBBA SASTRI: I am not aware of that. Any how, as I said before, Mr. H. G. Wells made that slashing observation because he had not the opportunity of meeting persons like the mystic Arabinda ghose, Ramana Rishi or the great swami of the Puri Matam, who is well versed in Sanskrit and English and who is able to defend Hindu theology, who thinks that spirituality is the only thing worth living and fighting for in this world and who teaches that the emotional things in this life are mere evanescent and useless ones. As the feeling of the House seems to be that I shall not be allowed to speak about theology and as I think that they feel that it is an offence to speak of God, I would simply confine myself to the motion under discussion. But so far as Hindu theology is concerned there is no superiority or inferiority complex between men and women. When it is said that this view of the orthodox Brahmin is an obnoxious one...... ......

MR. M. SIVATHANU PILLAI: May I know from the honourable member whether, from the point of view of Ayurveda, child marriage is healthy?

MR. K. R. RAMASUBBA SASTRI: I perfectly agree with the member that not only from the Ayurvedic point of view, but from every point of view, the consummation of the marriage, please note the word "*consummation*," before the age of 15 for the girl and 20 for the boy, is prohibited. I would say that in all communities it is desirable, no doubt, from physical point of view, that the marriage is consummated after age of 16 for the girl and 24 for the boy. But we are not concerned with the physical aspect alone. There is the mental or spiritual aspect of the question. Suppose if you have a boil in your back and you go

to the doctor. The doctor advises you that it may be cured by some external application. If you do that alone the consequence will be that the same disease may spring up again later on. What is needed is to apply a remedy to cure the defects in the system inside. It is not enough if we care for the exterior alone. Ethics is only the manifestation of the inner mentalities of man. If a woman has married before the age of 16, we have to see the mentality of the girl. I admit that so far as health is concerned, the consummation of the marriage should be at the age of 16 for a girl and 24 for a boy Here it is that we are mainly concerned with the question of spirituality. The object must be to see that the minds of the boy and the girl are pure. The girl must not have looked into the face of any other gentleman. Unfortunately, all religions seem to think that the mentality of the boy, even though he errs might be excused, but the lot of the girl can unfortunately, be never excused. I say that the ideal of asceticism for the male and chastity for the female are the main facts to be considered.

MR. M. L. JANARDHANAN PILLAI : Sir, I appeal to this House to consider whether this kind of reasoning practically helps us to get through clause, When I say this, I think, I am voicing the feeling of this House. I therefore request that the honourable member may be put in order by the Chair asking him to confine his remarks to the question in hand.

MR. K. R. RAMASUBBA SASTRI : Sir, I have a right to address.

DEPUTY PRESIDENT : He raised a point of order.

MR. K. R. RAMASUBBA SASTRI : Sir, I thought he was going to put a question for me to answer.

DEPUTY PRESIDENT : Yes, you may continue your speech and confine yourself with the mode of cognizance of the offence by the court.

MR. K. R RAMASUBBA SASTRI : I would not have yielded my place but I thought he wanted to ask a question.

DEPUTY PRESIDENT : It is a point of order and it can be raised at any time.

MR. K. R. RAMASUBBA SASTRI : Then, am I out of order when I say that the mentality of the male is asceticism and that of the female is chastity. (*Laughter*)

DEPUTY PRESIDENT : Perfectly out of order, so far as this motion is concerned.

MR. K. R. RAMASUBBA SASTRI : Then what is the use of marriage? (*Laughter*). Why should you go into marriage at all? If the child is to be child of the State, or for that matter, if the responsibility of the parent is taken away, then, what is the difficulty? I ask why you should saddle us with a responsibility? Why should the father be punished because the boy goes astray?

DEPUTY PRESIDENT : I repeatedly pointed out to the member that the only question for consideration and decision under this motion is how the court shall take cognizance of this matter. You shall not deal with any other matter. I have been watching the progress of the member. Please confine your observations to the question before the House otherwise, I shall be put to the necessity of asking the member to stop his speech.

MR. K. R. RAMASUBBA SASTRI: All that I can submit is that we are entirely at cross purpose so far as this Bill is concerned. I am not concerned with this Bill. I have passed out of the age of responsibility as a parent. I am only a grand parent and I am not concerned with the child marriage. But, I am here, to focus the attention of this House to the fact that, after all, child marriage depends upon a few considerations which are more spiritual in point of view and that spiritual aspect has to be taken into consideration.

DEPUTY PRESIDENT: The question of the relationship between sexes is not now under discussion. You may confine yourself to the mode in which courts may take cognizance of the offence under this Act.

MR. K. R. RAMASUBBA SASTRI: About the mode of complaint; then who is the party injured with reference to the child marriage? As my friend Mr. E. Subramonia Iyer points out, is it the parent, or is it any outside member or neighbour, who perhaps takes a malicious interest in saying that the marriage shall not be celebrated, or is it the Government that should put in the complaint? Why not the Government take charge of the whole affair and avoid prosecution. In order that there might be healthy relationship between the sexes, the whole responsibility of complaint should be with the Government and with nobody else. My proposition is that the ideal of the male is asceticism and that of the female is chastity. The female is more concerned with becoming a mother. In fact, nature seems to have created a difference in the functions between the male and the female. The female should be worshipped as a divine mother. No progress would be made at all if there were no sexes. If you assume the existence of a God, it means, in creating two sexes, he meant there should be a difference in the functions they have to perform.

MR. M. SIVATHANU PILLAI: May I know whether a complaint by a private party be placed before the court or whether the Magistrate himself take cognizance of the complaint.

MR. K. R. RAMASUBBA SASTRI: My honest conviction is that, so far as child marriage is concerned, the State should launch the complaint. It is not for the community to launch the prosecution. If the mentality of the community is in favour of child marriage and if you think that the Bill should be educative of that community by saying that the evil should be purged, then you should act only on the complaint of the members of that community. That is the position I contend for. I say all these, because it is highly necessary that in these matters vexatious complaints should not be brought in. After all, marriage once performed becomes an accomplished fact and a permanent one too; then what is the use of taking a man to the court after it is over? So, when once it is performed, it is the State that is offended. You cannot undo what is done. Unless the child repudiates, unless she says, "no, I cannot live with this man" what I say is, that the complaint should be made only by Government or by members of the community. It is for that purpose that I am seriously drawing the attention of this House to the fact that marriage should be considered in the light of the spiritual aspect.

MR. C. JEBAMONY NADAR: Supposing that you make a provision that only Brahmin Magistrates should try such cases?

MR. K. R. RAMASUBBA SASTRI: No, I have sufficient faith in other magistrates as well. In fact, the Brahmin Magistrate would not mete out justice to Brahmins out of fear that he would be accused of acting under communal bias.

Now, what does it matter even if one is convicted, conviction carries no stigma and great men in British India have lots of convictions behind them and now there is one thing, after all, which I should bring to the notice of this House. Is western civilisation after all, such a very very desirable object under the present conditions that we should rush in to adopt it ignoring our ancient culture?

MR. M. SIVATHANU PILLAI: May I know why the members of the Brahmin community alone are considered competent to prefer a complaint?

MR. K. R. RAMASUBBA SASTRI: What I said is that if a child marriage is performed, the members of that community should come forward and prefer a complaint. I am not concerned with the question of Brahmin or non-Brahmin, I simply brought in the word Brahmin, because, unfortunately, this community is affected most.

MR. K. R. RAMASUBBA SASTRI: I have great respect for Mr. E. Subramonia Aiyar, and I accept the correctness of his views in this matter.

MR. M. SIVATHANU PILLAI: Is it the honourable member's view that because Mr. E. Subramonia Aiyar has table the amendment, it must be correct?

MR. K. R. RAMASUBBA SASTRI: Sir, in courts, even when we are arguing elementary principles of law we are asked to quote authorities and we say the "Privy Council has held, the Allahabad High Court has held, and so on. Therefore, to decide whether a particular view is correct or not there is absolutely no harm in quoting authorities and I rely on the authority of my learned friend Mr. E. Subramonia Aiyar. I believe in his wisdom and legal acumen. I defer to him in those matters. If my friend Mr. Sivathanu Pillai does not agree with me in this matter also, it is quite open to him not to rely on the authority of Mr. E. Subramonia Aiyar.

As I was submitting, Sir, after all western culture is not very desirable from the ethical point of view.

DEPUTY PRESIDENT: How is your reference to western culture quite relevant now? Please make it more explicit

MR. K. R. RAMASUBBA SASTRI; It is relevant because this Bill has been copied from British India where they have followed western culture. It is all the work of the missionaries who have always been fighting the orthodox Hindus wherever possible: the missionaries have been at the bottom of the whole movement.

MR. C. JEBAMONY NADAR : I question that statement; I challenge it.

MR. K. R. RAMASUBBA SASTRI : I submit, Sir, I am not saying anything against the missionaries. They have done good work in India. They honestly believe that child marriage and several other Hindu institutions are evils; and naturally they do their best to eradicate them. Therefore it is western culture that is responsible for the British Indian Act. Am I wrong in saying that? I believe I am not.

Sir, there cannot be a more wretched condition of homelife than what you find in the west. Homelife has absolutely disappeared there. On the other hand, how many happy homes are there in our country?

DEPUTY PRESIDENT : The honourable member is attacking the principle of the Bill which has been accepted by the House long ago.

MR. K. R. RAMASUBBA SASTRI: Not at all, Sir; I quite agree that so far as actual, physical marriage, consummation, is concerned, the minimum age of the girl should be 16 and that of the boy 24 or 25. All that I want is that a single provision should be introduced to the effect that a sort of engagement register or betrothal register should be kept wherein our sacramental engagements would be registered so that the boy and girl would feel that each one lives for the other and participate in Dharma as ordained in our Hindu Theology.

DEPUTY PRESIDENT: You have tabled a separate motion for that; you can reserve your remarks on Hindu Theology to that.

MR. K. R. RAMASUBBA SASTRI: Yes, Sir. I was just hinting; that is all.

What I am submitting is that at least in our marriage we should not imitate the west. In the matter of giving more and more freedom to ladies, I yield to none; I am second to none in my respect for the other sex. In my opinion, if I am allowed to say that, they are undoubtedly the better and decidedly the major halves so far as our home economy is concerned. According to Hindu Theology, at 16 kalas one portion goes to God and one portion goes to matter; the other seven portions are divided between male and female. The balance that turns the relative advantage in favour of male or female is the control of the purse. If the male has the control of the purse, the female is generally starved, and if the female has the control of the purse the male is starved.

MR. M. SIVATHANU PILLAI: Is there no time limit even for the debates on legislative enactments?

DEPUTY PRESIDENT: The chair has been trying to enforce that rule when necessary.

Mr. Sastry, you may reserve your remarks on Hindu theology to amendment No. 21 or 22.

MR. K. R. RAMASUBBA SASTRI: After all, it seems to be a question of superiority or inferiority complex so far as the male and female are concerned. The relationship between the sexes is confined to that of parent and child, brother and sister and husband and wife. These three should not be confused. In order that I am not misunderstood, I would read the definition of personality if I am permitted to do so.

DEPUTY PRESIDENT: No.

MR. K. R. RAMASUBBA SASTRI: Then I do not want to say anything further.

My submission is that in a serious matter like marriage there should not be any complaint from any one who is not a member of the community to which the parties to the marriage belong, if the State refuses to take upon itself the responsibility of launching these prosecutions.

A word about the status of the unfortunate children, the offsprings of marriages. In the interests of these children, it is highly necessary that the relationship between the male and the female parent should be harmonious; such relationship should not be disturbed by mere physical considerations. We all owe a sacred duty......................

DEPUTY PRESIDENT: You need not touch upon that point now.

MR. K. R. RAMASUBBA SASTRI: I submit in conclusion, Sir, that I would much rather be prosecuted by the State if I am considered a senile old man who is talking in support of sacramental marriages.

MR. M. SIVATHANU PILLAI: I move that the question be now put.

The motion was put to vote and carried.

SRIMATI T. NARAYANI AMMA: Sir, the main contention of the oppositionists seems to be that it would create a tendency for black mailing by personal enemies. I do not think that there is any justification for such forebodings. As the honourable member Mr. P. S. Nilakanta Iyer said, every body has his avocation to follow. As I have already stated it was because the original Sarda Act was actually found to be a dead letter that the amendment Bill was brought forward and passed by the Indian Assembly after mature deliberations. After the passing of Mr. B. Das's Bill we get several instances of child marriages being brought to light and the offenders being brought to book.

The Hon'ble member Mr. E. Subramonia Aiyar for whom I have the greatest respect, said that, in Travancore we do not have child marriages to such an acute extent. According to the Census Report, the number of girls married between the ages of 5 and 10, is 8 per thousand, and that married between 10 and 15 is 80 per 1,000. Though the number is small when compared to British India it is bad enough to merit notice. The Census Commissioner has rightly characterised it as a *serious social evil*. I would again emphasise that child marriage should be made an impossibility in Travancore; that is the object of the Bill, and since this amendment helps that principal object of the Bill, it deserves the support of the House.

[Srimati T. Narayani Amma.]

The honourable member Mr. E. Subramonia Aiyar wanted the mover of the Bill to give an explanation as to whether the courts could proceed on any information laid before them. My explanation is that no court would straightaway, on receipt of information, go ahead with the prosecution; they would make the necessary enquiries and satisfy themselves that the information is reliable.

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With regard to the period fixed, six months is too short a period; If the offenders are able to hide the offence for six months they can easily escape the provisions of the law. Hence it is that the period has been extended to one year.

With regard to the charge of slavish mentality levelled against the mover of the Bill, I might say that it is always advisable to emulate what ever that is good in others, whether it be in British India or Timbuctoo. The Honourable Member Mr. Ramasubba Sastry asks us to look to our Sister States of Cochin and Mysore where the Bill has been thrown out. May I ask whether Travancore has not justly earned the reputation of being one of the foremost States in the whole of India? I also ask him whether Travancore is not forging ahead in all directions and whether she did not take the lead in granting temple entry and whether it is not in Travancore among all other states that the Bicameral legislature was first introduced? And I may submit that, in the matter of child marriage alone, Travancore lags far behind Baroda, Gwalior, Nawanagar and some other States. When Mr. B. Das' Bill was being discussed in Indian Assembly, the following telegram was sent to the Assembly:—

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Sir, the telegram speaks for itself. The position is more or less the same in Travancore also.

I hope honourable members will appreciate the usefulness of the amendment and vote for it.

The amendment was put to vote and carried.

SRIMATI T. NARYAANI AMMA: I demand a poll.

A poll was accordingly taken with the following results:—

AYES—14.

1 Mr. N. Narayana Kurup
2 ,, T. T. Kesavan Sastri
3 Sry. Devaki Antharjanam
4 ,, T. Narayani Amma
5 Mr. E. E. Pandarathil
6 ,, P. Sivarama Pillai
7 ,, M. L Janardhana Pillai
8 ,, M. Sivathanu Pillai
9 Mr. Kainikkara M. Padmanabha Pillai
10 ,, P. Narayana Pillai
11 ,, S. Narayana Pillai
12 ,, John Joseph
13 ,, Kaviyur K. Kochukunju
14 ,, C. Jebamony Nadar

NOES—7

1 Mr. P. S. Nilakanta Aiyar
2 ,, K. R. Ramasubba Sastri
3 ,, V. Chandamiah Sahib
4 ,, N. V. Joseph
5 Mr. Joseph Vithayathil
6 ,, E. Subramonia Aiyar
7 ,, Raman Namboori pad

NEUTRALS—8.

1 Mr. M. K. Nilakanta Aiyar
2 ,, M. Govinda Pillai
3 Dr. G. D. Nokes
4 Mr. G. S. Abdul Kareem
5 Mr. Puthupally S. Krishna Pillai
6 ,, G. B. E. Truscott
7 ,, A. Gopala Menon
8 ,, M. Ramachandra Rao

The amendment was declared carried 14 voting for 7 voting against and 8 remaining neutral.

MR. E. SUBRAMONIA AIYAR: Sir, I proceed to move the amendment standing in my name with these prefatory words. The blood out of that amendment is practically drawn out by the passing of the previous amendment. Now that the previous amendment has been accepted, the consequence is that a Magistrate of the first class may take cognizance of an offence under this bill either upon a complaint or upon information laid. What is the sort of information or the form of information subsequent experience will tell us. I have been watching the proceedings in the British Indian Assembly. There the discussion centred more about Dharma Sastras and the social reformers. With all respect to the composition of that Assembly I must say that very little attention has been paid to words of the statute and the necessary implications thereof. With great respect to those great men who have taken part in that legislature it is my honest view I am prepared to support it with all the arguments which I can command that sufficient attention had not been paid to the drafting of that legislation. I know that it received the support, sometimes silent, sometimes active, of a Government who did not want to join issue with a legislature composed of people who are attempting to wreck the very constitution. That is not the state of things prevailing in Travancore. God forbid that we shall be faced with such a situation. Apart from the principle

[Mr. E. Subramonia Aiyar.]

of the bill, what I would request the Honourable Members of the House is not to be carried away by feelings of sentiment when we are dealing with the actual words of the Bill. Whatever be the consequences of the doubtful phrase "information laid" and whatever further consequences we are going to have in courts of law, we find, because the amendment has been accepted by the House, that two courses are open. A Magistrate can take cognizance of a case either upon a complaint or upon information laid. I will not use the words "information received". If the Section was in this form that a court shall take cognizance of a case only upon information laid or upon information received, I would have most gladly withdrawn my amendment because it will not serve any purpose whatsoever. But, fortunately or unfortunately, still there are two courses open. So my amendment still stands and therefore I propose to move it. For in matters of this description what little foothold one can secure may be of permanent benefit to persons who come after us and who have to bear the brunt of this legislation.

DEPUTY PRESIDENT: Does not the previous amendment which has been carried cut at the root of your amendment? Do you still propose to move it?

MR. E. SUBRAMONIA AIYER: No, it does not cut at the root of my amendment. If the prosecution is to be started upon a complaint then my amendment says that it should be in this particular form. No doubt, the discussion in this House with respect to the previous amendment turned upon this point, namely, that a Magistrate upon information received or laid may take cognisance of the case and go on with the complaint. Well, hereafter let all the prosecutions under this Act be initiated and heard as it were by a Magistrate of the first class, but let there be some security. If the view of the members of this House is that that is a necessary provision let there at least be uniformity. Why should we introduce this "complaint" if there is little distinction between complaint and information laid? If information laid is more satisfactory why should we have the fetish of a complaint? Now that we have allowed the two things to remain—certainly the House is wiser than myself when the House allowed the previous amendment to be passed that a court may take cognizance of an offence either on a complaint or on information laid, certainly I am to bow to the decision and think that in the view of this House there is a vital difference between complaint and information laid. If I say that there is absolutely no distinction between the two after the House has accepted that amendment, as Swift has said that he was unable to make a distinction between.. and.................................., if I say that there is no distinction between complaint and information laid, now that the house has accepted the amendment, I will be stultifying myself.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I rise to a point of order. I suppose my friend, Mr. E. Subramonia Aiyar is moving amendment No. 10. His amendment is that after the words "save upon complaint made" and before the words "within six months" certain words should be inserted. But these words do not exist now. If it is permissible he must amend his amendment.

DEPUTY PRESIDENT: I suppose, Mr. Subramonia Aiyar may suitably modify his amendment to fit with the section as now amended.

MR. PUTHUPALLY S. KRISHNA PILLAI: Then the question arises whether a clause which has been accepted by this House, can immediately be amended by this House, because when Sry. Narayani Amma's motion was adopted, it stands as clause 8 now, and the question is whether after the adoption of her amendment it is open to a member to amend the clause. In any case this amendment cannot be permitted to be discussed because the words mentioned there do not exist in the clause. If there is any other amendment before the House that may be permitted to be discussed if it is permissible in law.

MR. E. SUBRAMONIA AIYER: Sir, it was only an amendment to clause 8 which was accepted by this House. The clause 8 is still there.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, my point is that the words "save upon complaint made" and within six months" cannot be found in the amended clause. Suppose the amendment of Mr. Subramonia Aiyar is passed the House will have to go about searching for those words and the Secretary will be put to much trouble. So this amendment cannot be discussed.

DEPUTY PRESIDENT: As the words of your amendment stand at present, your amendment cannot fit in with the clause. Do you propose to modify your amendment?

MR. E. SURRAMONIA AIYAR: I shall explain how it can come in and fit in. The original clause was that no court shall take cognizance of any offence under this Act save upon complaint made within 6 months of the solemnisation of the marriage in respect of which the offence is alleged to have been committed. Practically the amendment would make the section read that a court may take cognizance of a case upon a complaint or on information laid, etc., etc., So far as my amendment is concerned it will fit in with that Section even in the new form provided I get the permission of the Chair to strike away the word "save."

MR. PUTHUPALLY S. KRISHNA PILLAI: What about the words "six months"? They will also have to be struck away. Sir, it is a substantive motion and no further alteration is possible. When the question is put and if the House is of the opinion that the amendment should be passed, where will we go for the words "save upon complaint

[Mr. Puthupally S. Krishna Pillai.]

made" and 'within six months"? Of course, there is the word "complaint" there. But the words "within six months" do not occur any where.

MR. M. SIVATHANU PILLAI: Sir, the motions of Mr. E. Subramonia Aiyar and Mr. P. S. Nilakanta Aiyar ought to have been moved while the motion of Sry. Narayani Amma was being considered by the House and all these three motions ought to have been put to the vote of the House one after the other. Then the whole difficulty would have been obviated. But now that the motion of Sry Narayani Amma has been passed, Mr. Subramonia Aiyar has no right to have this motion, as the House has come to a decision on the previous motion.

According to my view, Sir, Mr. Subramonia Aiyer's amendment cannot be moved now nor is Mr. Nilakanta Aiyar entitled to move his amendment.

MR. E. SUBRAMONIA AIYAR: As submitted already the words which I want to introduce in the new clause 8 are "by not less than five members of the community to which the parties to the marriage belong". This insertion is to come after the expression "complaint made". No doubt in the prior bill there were the words "save upon complaint made" that is not the material portion. In the section newly put in, the words "complaint made" are there. After that, I want to add the expression "by not less than five members of the community to which the parties to the marriage belong". Therefore it is I said, when I opened the discussion, the words. "save" and "six months" be taken away. I grant that I am not eligible to move my amendment No. 10 in the newly inserted clause, provided' what is passed by the House is an identical one. I give importance to the word "complaint" in the new clause passed by the House. So, my submission is that my amendment is not over-thrown by the prior amendment in any form what so ever. As for Mr. Nilakanta Aiyar's amendment, he will take care of it himself. So far as my amendment goes, Mr. Sivathanu Pillai says that in so far as this amendment was not put forward first it could not be moved. I am unable to agree with him there. According to my amendment in the list, the expressions "save upon complaint made" and "within six months" only indicate the place where the words I newly want to put in are to be tacked on. So, there is absolutely no necessity to change the substance of the amendment. If the few words I have moved are also put in the section would be free from defect.

MR. PUTHUPALLI S. KRISHNA PILLAI: Between the words "save upon complaint made" and "within six months" there are a large number of words to be put in. Where are those to be located, in the new clause passed by the House. So, my point is that if Mr. Subramonia Iyer wants to make a new amendment to the clause, he is estopped from doing so, because clause 8 has been approved by the House.

DEPUTY PRESIDENT: My idea of Mr. Subramonia Iyer's point is to amend the new section passed by the House so as to read like this.

> "The court may take cognisance of an offence under this Act either upon complaint *made by not less than five members of the community to which the parties to the marriage belong* or information laid before it within one year from the date on which the offence is alleged to have been committed."

MR. PUTHUPALLI S. KRISHNA PILLAI: That is to say, the words must be changed. But where is the scope for it in the new section passed by the House.

DEPUTY PRESIDENT: He lays emphasis on the words "complaint made" in the section newly approved by the House.

MR. E. SUBRAMONIA AIYAR: So I beg leave to make the amendment in this modified form.

> "The words by not less than five members of the community to which the partie to the marriage belong, be inserted after the words '*complaints made*' and "before or information laid" in the new clause.

MR. M. SIVATHANU PILLAI: Am I to take it that the qualification that is proposed now is only in respect of "complaint" and not in respect of "information".

MR. E. SUBRAMONIA AIYAR: Yes, Sir.

MR. PUTHUPALLI S. KRISHNA PILLAI: Standing order No. 23 reads thus:

> "A motion must not raise a question substantially identical with one on which the Assembly has given a decision in the same session".

Here a motion was made that clause 8 shall be substituted for the existing clause and that was adopted by the House after a full discussion. Now if Mr. Subramonia Iyer's amendment is allowed to be put in, that will be opening a discussion of the same motion adopted by the House. We cannot go back like that, at any rate not at this session.

Again there are other provisions to this section thus:

> "Any motion for the amendment of a *Bill* which has been re-committed to a select Committee.
>
> Any motion for the amendment of a Bill made after the return of the Bill by the Dewan for re-consideration by the Assembly.
>
> Any motion for the amendment of a Bill which is consequential on, or designed merely to alter the drafting of, another amendment which has been carried."

So that, in respect of the amendment which is sought to be moved if it falls within any of the provisions just now passed, the Chair can allow it.

MR. E. SUBRAMONIA AIYAR: I may be permitted to add by way of explanation, Sir. I do not propose an amendment to an amendment. My amendment is not with reference to information laid or with reference to time being fixed for it. There was no discussion upon the word "complaint" in the Section. It is only on complaint, the whole section rests. If there was a discussion on that and the clause had been voted upon, I have nothing to say. We must only get at the substance of the clause. If it is a technical matter, that should not

[Mr. E. Subramonia Aiyar.]

trouble us much. We are not concerned with forms. Rules are introduced only for the purpose of clarifying matters and preventing discussion on really unnecessary matters. Every rule has a purpose to serve. Let us now see what the real amendment is. Every procedure is initiated by means of complaint. It is the word 'complaint' I want to define. There was no discussion on that when Srimati Narayani Amma's amendment was being discussed. The discussion proceeded on the assumption that there should be a complaint. That point never came up for comment, therefore, I think I am perfectly in order under Standing Orders to move my amendment in the modified form.

MR. M. SIVATHANU PILLAI: Sir, what I wish to point out is this. What is the amendment that has been carried by the House? The amendment is this. "Substitute the following for clause 8". I take it that clause 8 means, clause 8 as a whole Now that was the motion before the House? Substitute clause 8 as a whole. So clause 8 as substituted has been passed. It is only in the form of an amendment that a clause can be modified. Clause 8 as in the Bill should be removed and in its place clause 8 as amended should be substituted. I submit that the amendments of Mr. E. Subramonia Iyer and Mr. Nilakanta Iyer should have been moved when the amendment to clause 8 was discussed. Now, clause 8 as a whole has been taken away and the present clause has been substituted. So there is no scope of making any more amendments to clause 8. It will be a mere repetition. There will be no end to it. The whole clause has been removed and another clause has been substiuted. It has been considered as a whole. It is not now open to any member to amend it. These amendments should have in propriety, been moved when clause 8 was being considered so that the House may have voted upon the amendments one after another. Now that the House has already decided upon this motion, it is not open to any member to reopen it. There is no possibility of any member reopening it even with the permission of the Chair because it will be overdoing the same thing. Clause 8 has been considered as a whole and resolved upon. Whether the modification will fit in with the clause or not is not the question as contended by Mr. E. Subramania Iyer. It may be argued that the House adopted the clause without any qualification. When the House adopted the amendment of Srimati Narayani Amma it shows that it was not in a mood to adopt any qualification. Now, why should Mr. E. Subramonia Iyer say that it was not discussed?

MR. K. R. RAMASUBBA SASTRI: With due deiference to the argument advanced by the previous speaker. I would say that it was specifically understood that this amendment would be moved as a separate amendment. If the learned Legal Remembrancer wanted to take any objection he ought to have taken it at that time. He gave us to understand that this amendment would be considered after the other amendment. Again, there seems to be no consideration between the amendment already passed by the House and the present amendment

proposed by Mr. E. Subramonia Iyer. Mr. Subramonia Iyer's amendment is to insert the words "by not less than 5 members of the community to which the parties to the marriage belong". I do not see anything wrong in principle or substance in allowing the amendment to be moved as a separate one especially when it was definitely given to understand by the Legal Remembrancer that this amendment will be allowed to be considered later on. This is a very important amendment. The iniating proceedings with reference to offences under this section has to be qualified very seriously so that the rights of the citizens or at least the community that would be affected should be protected. I think it is unfair that this amendment should be objected on technical grounds. Even if there is some technical difficulty, I would urge the consideration of the Chair to overrule such technicalities and say that the complaint shall be launched and the proceedings shall be started only on the complaint made by five members of the community to which the parties belong. If it was suspected that we could not move this amendment we would have talked when the previous amendment was under discussion. On the other hand when the previous amendment was discussed we were told that an opportunity will be given to speak on this amendment. Why was it said like that then? Is it fair to make a suggestion like that and afterwards throttle us by saying "No, you shall not speak on the same point." Was the Legal Remembrancer justified in saying that this amendment may be referred to another occasion when he said the right to speak on the amendment will be given?

MR. PUTHUPALLY S. KRISHNA PILLAI: On a point of personal explanation. The Legal Remembrancer did not say anything of that sort. If any honourable member was under the impression that the Legal Remembrancer said that this motion may be admitted or that motion may not be admitted or that they may be allowed or may not be allowed to speak on some motion, they must be wrong. I am perfectly certain that I did not give any such undertaking and if honourable members have understood something different from what they, ought to have understood, I am not to be blamed and any blame that is attempted to be laid on me is not in order. I have to bring to the notice of the House that it is my duty to point out whether a particular motion is in order or not, what will be its effect if moved and all that. It is one of my legitimate duties. Standing orders and rules are available to all the members as much as it is available to me. Here was an amendment that clause 8 shall be substituted by an amendment. The question was put to the House and passed. Immediatetly to turn round and say that it was not what was meant, is not correct. We have now completely accepted the amendment. Now we are, as it were, putting a lever and trying to open it so that new words may be put into it. Is the Legal Remembrancer wrong? In pointing it out I am placing these facts for the consideration of the Chair and pointing out that no fault should be attributed to the Legal Remembrancer?

MR. K. R. RAMASUBBA SASTRI: I was only saying that he was very modest. His word is law in the Assembly. When he says that such and such motion can be moved, we take it at its face value. When he advises the House he has got the same value as words from the Chair.

DEPUTY PRESIDENT: The point of order is whether the amendment of Mr. E. Subramonia Iyer on the clause as amended by Srimati Narayani Amma and carried should be allowed to be moved. In considering whether this amendment can be allowed, I am governed by the provisions of Standing Order Nos. 23 and 25. Standing Order No. 23 lays down that a motion cannot be raised on a substantially identical one on which the Assembly has already given its decision in the same session. Now, it has to be considered whether the motion that is proposed by Mr. E. Subramonia Iyer raises a question substantially identical with the one on which the Assembly has given a decision in the matter of Srimati Narayani Amma. For my part, I must rule that the motion of Mr. E. Subramonia Iyer does not raise a question substantially identical as recorded on the motion of Srimati Narayani Amma.

The House adjowned *sine die* at 4·55 P. M.

A. GUNAMONI,
Secretary Sri Mulam Assembly.

PROCEEDINGS
of
THE TRAVANCORE SRI MULAM ASSEMBLY.

(OFFICIAL REPORT.)

SECOND ASSEMBLY

FOURTH SESSION

Friday, the 23rd June 1939/9th Mithunam 1114.

The Assembly met again in the Legislative Chamber, Public Offices, at eleven of the clock with Sachivottama Sir C. P. Ramaswami Aiyar, K. C. I. E., the Dewan-President in the Chair.

MEMBERS SWORN.

The following new members took the oath and signed the rolls :

1. Mr. C. V. Chandrasekharan (*Pro-Vice Chancellor*).
2. ,, K. Dominic Joseph (*Vaikom* cum *Kottayam*).
3. Dr. M. K. Gopala Pillai (*Director of Public Health*).
4. Mr. K. G. Govindan (*Pathanamthitta*).
5. ,, M. Govinda Pillai (*Financial Secretary to Government*).
6. ,, S. Govinda Pillai (*Chirayinkil* cum *Nedumangad*).
7. ,, Kannanthodath Janardanan Nair (*Karunagapalli* cum *Karthigapalli*).
8. ,, Padiyara Joseph Kunju (*Changanacherry* cum *Peermade*)
9. ,, Menatheri N. Kesava Panicker (*Karunagapalli* cum *Kartikapalli*).
10. ,, M. G. Kesava Pillai (*Trivandrum Town*).
11. ,, Thamarapallil Kochuthommen (*Thiruvalla*).
12. ,, Puthupalli S. Krishna Pillai (*Legal Remembrancer*).
13. ,, N. R. Krishnan (*Ambalapuzha* cum *Shertala*).
14. ,, A. K. Kumaran Vaidyan (*Kunnatnad* cum *Parur*).
15. ,, K. Kunju Panickar (*Mavelikara* cum *Kunnathur*).
16. Vaidyasastrakusala Dr. (Mrs.) M. Poonnen Lukose (*Surgeon-General*).
17. Mr. Varkala K. Madhavan (*Chirayinkil* cum *Nedumangad*).
18. Sahib Bahadur P. S. Muhamed (*Quilon* cum *Kottarakara*).
12. Mr. G. Narayanan Tampi (*Secretary to Government*).
20. ,, S. Nataraja Pillai (*Co-opted Member*).
21. ,, M. K. Nilakanta Aiyar (*Chief Secretary to Government*).
22. ,, P. N. Nilakanta Pillai (*Co-opted Member*).
23. ,, P. Parameswaran Pillai (*Secretary to Government*).
24. ,, M. Ramachandra Rao (*Land Revenue and Income Tax Commissioner*).

25. Mr. P. Raman Pillai (*Conservator of Forests*).
26. „ R. Sivaraman Nair (*Tiruvalla*),
27. „ J. W. Tolson (*Travancore Planters*).
28. „ G Velu Pillai (*Karunagapalli* cum *Karthigapalli*).

QUESTIONS AND ANSWERS.

Register books in Taluk Offices.

68 * **MR. KOTTALIL P. ABRAHAM** (*Muvattupuzha* cum *Devicolam*) : Will the Government be pleased to state whether any register book is kept in the Taluk Offices to show the applications and petitions, whether stamped or otherwise, received by them from time to time and the action, if any, taken on them ?

MR. M. RAMACHANDRA RAO : Yes.

MR. KOTTALIL P. ABRAHAM : May I know from the member whether copies of entries in such registers will be made available to private parties on application ?

MR. M. RAMACHANDRA RAO : Endorsements regarding disposals of petitions are generally sent to the petitioners, and if they apply for copies, the matter will be considered.

Exemption of agriculturists from payment of Market toll.

69. * **MR. PULIYOOR T. P. VELAYUDHAN PILLAI** : iruvalla) Will the Government be pleased to state :

(*a*) whether the Land Revenue Commissioner has stated on behalf of Government during the Budget Session of the Sri Mulam Assembly in 1112 that he would take steps to free the agriculturists from the payment of market toll at least in respect of hand loads and head loads taken to the markets ;

(*b*) whether any motion has been passed in the Sri Mulam Assembly during its Budget Session in 1113 regarding the abolition of the market toll : and

(*c*) if the answer to parts (a) and (b) are in the affirmative, the steps taken in the matter ?

MR. M. RAMACHANDRA RAO : (*a*) Yes.

(*b*) Yes.

(*c*) The matter is under consideration and definite orders will be issued soon.

Transport Department.

70 * **MR. K. P. KOCHUKORA THARAKAN** (*Kunnatnad* cum *Parur*) : Will the Government be pleased to state :

(*a*) the number of buses and lorries fitted with crude oil engines imported till now for the use of the Transport Department and the price of each excluding its body ;

(*b*) the number of buses and lorries fitted with petrol engines imported till now for the said department and the price of each excluding its body;

(*c*) whether any amount has been spent by the said department for repairing the roads on which service buses of the said department are plying and, if so, the amount spent on each road till now (1-6-1114); and

(*d*) when the Government will start service on the Munnar-Alwaye line?

MR. M. K. NILAKANTA AIYAR (*Chief Secretary to Government*): (*a*) No bus or lorry fitted with Crude Oil Engine has been imported. The Transport Department buses are run by high speed diesel oil.

(*b*) None.

(*c*) The Transport Department does not spend any amount for repairing the road but it pays tolls at the scheduled rates. The amount spent under this item till 1-6-1114 is Rs. 31,453.

(*d*) Lorry service has been started on the line from the 29th May 1939.

MR. K. P. KOCHUKORA TARAKAN: നാഗർകോവിൽ ലൈനിൽ വല്ല ബസ്സുകളും വാടകയ്ക്കു് എടുത്തിട്ടുണ്ടോ?

MR. M. K. NILAKANTA AIYAR: ഇല്ല.

MR. K. P. KOCHUKORA THARAKAN: മൂന്നാററിൽ ഓടിക്കപ്പെടുന്ന മി. മരക്കാരുടെ ലോറികൾ വല്ലതും വാടകയ്ക്കു് എടുത്തിട്ടുണ്ടോ?

MR. M. K. NILAKANTA AIYAR: ഒരുതവണ എടുത്തിട്ടുണ്ടു്.

MR. K. P. KOCHUKORA THARAKAN: മൂന്നാററിലുള്ള ലോറികളിൽ യാത്രക്കാരെ കൊണ്ടുപോകുന്നതിനുള്ള വല്ല സൌകര്യങ്ങളും ഉണ്ടോ?

MR. M. K. NILAKANTA AIYAR: ഇല്ല.

Transport Buses.

71. * **MR. K. P. KOCHUKORA THARAKAN:** Will the Government be pleased to state:

(*a*) the number of buses got down for State Transport purposes which have become unserviceable up to the 15th Kumbhom 1114;

(*b*) the number of tyres and tubes got down till the 15th Kumbhom 1114 for the use of Transport buses and the price of each; and

(*c*) will the Government be pleased to lay on the table a statement showing the amount spent towards paying tolls during the six months from the 1st Chingom 1114 to the 1st Kumbhom 1114?

MR. G. NARAYANAN TAMPI: (*a*) One. (It was burnt by a mob at Quilon).

(*b*) Tyres are supplied by a firm of Contractors on a mileage basis and under a special contract.

(*c*) The amount is Rs. 17,270-0-0.

Quarterly Civil List.

172. * **MR. KOTTALIL P. ABRAHAM**: Will the Government be pleased to state:

(*a*) whether in respect of the Quarterly Civil List published for the last two years any communications regarding errors or omissions were received by the Accountant General, Trivandrum;

(*b*) if so, whether any corrections or omissions were really made accordingly;

(*c*) whether the Civil List is a sure and reliable document for ascertaining the ranks and seniority of officers shown therein; and

(*d*) if and when their ranks are seen differently in different Civil Lists, whether such changes would receive previous approval from the Government?

MR. M. GOVINDA PILLAI: (*a*) Yes.

(*b*) Yes.

(*c*) Yes, so far as the rank of permanent officers is concerned.

(*d*) Yes.

Realisation of water tax.

73. * **MR. K. NARAYANAPERUMAL NADAR** (*Tovala* cum *Agastisvaram*): Will the Government be pleased to state:

(*a*) whether they are adopting coercive process for the realisation of water tax for *puduval, tharisu*; or fallow lands in 1113 in the area commanded by the Kodayar Project; and

(*b*) if the answer to part (*a*) is in the affirmative, whether they had received representations praying for remission?

MR. M. RAMACHANDRA RAO: (*a*) No coercive steps for the realisation of water tax for *puduval, tharisu* or fallow lands in 1113 in the area commanded by the Kodayar Project were taken for the Kanni crop of 1113, as remission of tax was sanctioned by Government. Coercive steps were taken for the Kumbhom crop of 1113 as no such remission was allowed for that crop.

(*b*) No representations for remission of tax for the Kumbhom crop of 1113 were received.

Public Service Commissioner.

74. * **MR. K. P. KOCHUKORA THARAKAN**: Will the Government be pleased to state who is the Public Service Commissioner at present; whether he is on leave or doing duty as Public Service Commissioner and if he is on leave, the person appointed as the Public Service Commissioner in his place?

MR. M. K. NILAKANTA AIYAR: Dr. G. D. Nokes. He is on leave. No substitute has been appointed. (The Secretary to the Commissioner is in additional charge of the current duties of the office, pending final arrangements).

MR. K. P. KOCHUKORAITHARAKAN: കറൻറ ഡ്യൂട്ടി കം നോക്കുന്നതിനാണ് എന്ന് ഇവിടെ പറഞ്ഞുകാണുന്നു. അതിൽ ഉദ്യോഗനിയമനംകൂടി ഉൾപ്പെട്ടുമോ?

MR. M. K. NILAKANTA AIYAR: അതുംകൂടി ഉൾപ്പെട്ടും.

MR. K. P. KOCHUKORA THARAKAN: പബ്ലിക്ക സർവീസ് കമ്മീഷണരുടെ ജോലികളെല്ലാം ഇപ്പോൾ സിക്രട്ടറിയാണോ വഹിക്കുന്നതു?

MR. M. K NILAKANTA AIYAR: അതെ.

MR. K. P. KOCHUKORA THARAKAN: അങ്ങനെയാണെങ്കിൽ ഇത്ര വലിയ ശമ്പളവുംകൊടുത്തു് വേറൊരാളെ വയ്ക്കേണ്ട ആവശ്യമുണ്ടോ?

MR. M. K. NILAKANTA AIYAR: ഇതു് തൽക്കാലത്തേക്കുമാത്രമാണ്.

MR. K. R. NARAYANAN (*Vaikom cum Kottayaym*): പബ്ളിക്ക സർവീസ കമ്മീഷണർ അവധിയെടുത്തതു് എന്നാണെന്നു പറയാമോ?

MR. M. K. NILAKANTA AIYAR: അതു് ൪-൪-൧൧൨൩-ൽ ആണ്.

MR. K. R. NARAYANAN: എത്രകാലത്തേയ്ക്കാണ് അവധിയെടുത്തതു്?

MR. M. K. NILAKANTA AIYAR: മൂന്നുമാസം പതിനെട്ടു ദിവസം.

MR. K. R. NARAYANAN: ഇപ്പോൾ ജോലിനോക്കുന്ന സെക്രട്ടറി ഏതു സമുദായത്തിൽപെട്ട ആളാണെന്നു പറയാമോ?

MR. M. K. NILAKANTA AIYAR: അദ്ദേഹം അയ്യങ്കാരാണ്.

MR. K. R. NARAYANAN: പബ്ളിക്ക സർവീസ കമ്മീഷണരുടെ സിക്രട്ടറി നടത്തുന്ന നിയമനങ്ങൾ അക്രമമായിട്ടുള്ളതാണെന്നു് ആരെങ്കിലും ഗവർമെൻറിനെ അറിയിച്ചിട്ടുണ്ടോ?

MR. M K NILAKANTA AIYAR: ഇല്ല.

MR. PADIYARA JOSEPH KUNJU: പബ്ളിക്ക സർവീസ കമ്മീഷണർക്കുപകരം നിയമിതനായിരിക്കുന്ന അദ്ദേഹത്തിൻെറ സിക്രട്ടറിയുടെ ഉദ്യോഗനിയമനങ്ങൾനിമിത്തം പലവിധകുഴപ്പങ്ങളും ഉണ്ടായിട്ടുള്ളതായി അറിയാമോ?

MR. M. K. NILAKANTA AIYAR: അറിഞ്ഞുകൂടാ.

Supply of medicine to the District Hospitals.

75. ✻ MR. P. NARAYANA PILLAI (*Mavelikara* cum *Kunnattur*): Will the Government be pleased to state:—

(*a*) The months in which the annual supply of medicine was made to the District Hospitals of Quilon, Alleppey and Trivandrum; and

(*b*) The number of in-patients and out-patients treated in those hospitals during each of those years?

VAIDYASASTRAKUSALA (MRS,) M. POONEN LUKOSE (*a*) and (*b*) It is not possible to furnish an answer as the period for which the information is required is not specified in the question.

Lady clerks in the Secretariat.

76. ***MR. K. P. KOCHUKORA THARAKAN** : Will the Government be pleased to lay on the table a statement, by caste, of the lady clerks appointed before 30th Meenam 1114, in the Secretariat?

MR. M. K. NILAKANTA AIYAR : *The statement is laid on the table.

MR. K R. NARAYANAN : സെക്രട്ടേറിയറ്റിലെ നിയമനത്തിൽ അഞ്ചു നായർ, മൂന്നു ഈഴവർ, ഒരു ജാക്കോബൈറ്റ് ഇത്രയും നിയമനങ്ങൾ ഉണ്ടെന്നു പറഞ്ഞുകാണുന്നു. ഇത് പബ്ലിക്കസർവീസ് കമ്മീഷണരുടെ നിയമനത്തിനു മുൻപു നടന്നതാണോ അതല്ലാ പിന്നീട്ട നടന്നതാണോ?

MR. M. K. NILAKANTA AIYAR : ഇത് ൧൧൦൯ മുതൽ ൧൧൧൪ വരെയുള്ള നിയമനങ്ങളാണ്.

MR. K. R. NARAYANAN : പബ്ളിക്കസർവീസ് കമ്മീഷണരുടെ നിയമനങ്ങൾ ഇതിൽ ഉൾപ്പെടുന്നുണ്ടോ?

MR. M. K. NILAKANTA AIYAR : ഇല്ല.

MR. K. R. NARAYANAN : പബ്ളിക്കസർവീസ് കമ്മീഷണർ സെക്രട്ടേറിയറ്റിലേക്ക് റെക്കമെന്റു ചെയ്യപ്പെട്ട ആരെയെങ്കിലും ഗവൺമെന്റിൽനിന്നും ഉപേക്ഷിച്ചിട്ടുണ്ടോ?

PRESIDENT: The Honourable member cannot answer that question.

Lady Clerks in the High Court.

77 ***MR. K. P. KOCHUKORA THARAKAN** : Will the Government be pleased to lay on the table a statement, by caste, of the lady clerks appointed before the 30th Meenam 1114, in the High Court?

MR. G. NARAYANAN TAMPI : ‡The required statement is laid on the table.

MR. K. P. KOCHUKORATHARAKAN : ഒരു ദിവസത്തേക്ക് ഒരാളെ നിയമിച്ചിരിക്കുന്നതായി കാണുന്നു. അത് പബ്ളിക്കസർവീസ് കമ്മീഷണരുടെ നിയമനമാണോ അതല്ല ഡിപ്പാർട്ടുമെന്റൽ ഹെഡ്സിന്റെ നിയമനമാണോ?

MR. G NARAYANAN THAMPI; ഡിപ്പാർട്ടുമെന്റ് മേധാവിയുടെ നിയമനമാണ്. ഒരു മാസത്തിൽ കുറവായ ഒഴിവുകളിൽ നിയമനങ്ങൾ നടത്തുന്നതിന് പബ്ളിക്കസർവീസ് കമ്മീഷണരോട് ചോദിക്കേണ്ടയാവശ്യമില്ല.

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*Vide Appendix I.

‡Vide Appendix II.

Railway Halting Station at Eravipuram.

78 *MR. S. NARAYANA PILLAI (*Quilon* cum *Kottarakara*): Will the Government be pleased to state whether there has been any demand for a Railway Halting Station at Eravipuram, between Quilon and Mayyanad and whether any, and if so, what steps have been taken in regard to the same?

MR. M. GOVINDA PILLAI: The answer to the first part of the question is in the affirmative. In regard to the second part, the proposal has been held over.

MR. S. NARAYANA PILLAI: May I know why the propsal has been held over?

MR. M. GOVINDA PILLAI: Government do not consider the necessity for the opening of this station as urgent.

Compound walls to the Perumbavoor cattle market.

79 * **MR. K. P. KOCHUKORA THARAKAN:** Will the Government be pleased to state:

(*a*) whether compound walls have been put up on all the four sides of the Perumbavoor cattle market, with necessary gates, and whether any sheds for protecting the cattle from sun and rain have been constructed;

(*b*) if so, the expenditure incurred for each of the items;

(*c*) if not, whether there is any special reason for it, if so, what it is; and

(*d*) the amount for which right of collecting tolls on the above said cattle market has been given in auction during each of the years 1112, 1113 and 1114?

MR. M. RAMACHANDRA RAO: (*a*) No.

(*b*) This does not arise in view of answer to part (*a*).

(*c*) the market was opened only in 1113. The construction of compound walls and sheds would require a heavy expenditure and it would not be expedient to spend such an amount before knowing how the market prospers.

(*d*) The market was not in existence in 1112. The bid amount for the year 1113 was Rs. 636 and that for the year 1114 is Rs. 1165.

MR. K. P. KOCHUKORATHARAKAN: പെരുമ്പാവൂർ കന്നുകാലിച്ചന്തയുടെ മതിലുകൾ കെട്ടിച്ചിട്ടില്ലാ എന്നു പറയുന്നു. അവിടെ നിന്നും പിരിഞ്ഞുകിട്ടിയ ടോൾ ൧൧൧൩-ൽ ൬൩൬ രൂപയും, ൧൧൧൪-ൽ ൧൧൬൫ രൂപായും ഉള്ളതായി കാണുന്നു. ആ സ്ഥിതിക്ക് ആ ചന്തയുടെ മതിലുകൾ കെട്ടിയടക്കണമെന്ന് ഗവണ്മെൻറ് ഉദ്ദേശിക്കുന്നില്ലേ?

MR. M. RAMACHANDRA RAO: Yes; the matter will be considered in the course of the year 1115.

MR. K. P. KOCHUKORATHARAKAN: ലേലത്തിന്റെ സംഖ്യ കൂടിവരുന്നതുകൊണ്ട് മതിലുകൾ കെട്ടിയടക്കണമെന്ന് ഉദ്ദേശിക്കുന്നില്ലേ?

MR. M. RAMACHANDRA RAO; I cannot make a promise but I shall try to include it in the funds for maintenance.

MR. K. P. KOCHUKORATHARAKAN: അതാതു ചന്തകളിൽനിന്ന് പിരിഞ്ഞുകിട്ടുന്ന ലേലസംഖ്യ അവിടെത്തന്നെ ചിലവാക്കണമെന്നില്ലേ?

MR. M. RAMACHANDRA RAO: Not necessarily. It is not the policy of Government.

Assignment of Puduval lands.

80 * **MR. KOTTALIL P. ABRAHAM**: Will the Government be pleased to state:

(*a*) whether in assigning by them puduval lands either by registry or in public auction, a true copy of the survey plan of such lands is made available to the parties concerned, (1) before the assignment and (2) after the assignment;

(*b*) if the answer to (*a*) is in the affirmative, (1) where and by whom and (2) whether the copy is supplied gratis or for cost;

(*c*) whether copies of survey plans supplied from the Taluk Offices to parties on applications are directed to contain (1) the area (2) the side-measurements (3) the off-set measurements and (4) the boundaries; and

(*d*) whether they are aware that ordinarily the copies of survey plans furnished from the Taluk Offices do not contain the off-set measurements without which it is almost impossible to definitely locate and identify the intending property on the land?

MR. M. RAMACHANDRA RAO: (*a*) No. Copies are not generally made available. They are, however, supplied on payment of cost to parties on applications both before and after the assignment.

(*b*) (1) Copies are supplied by the Tahsildars of the taluks where the lands lie.

(2) On payment.

(*c*) and (*d*) Copies will generally contain the area, the side-measurements, off-set measurements and boundaries. Certain copies will not contain off-set measurements according to the nature of the survey field or the system of survey undertaken. All particulars contained in the original plan are given in the copies also.

Appointments in Public Service.

81 * **MR. P. NARAYANA PILLAI** Will the Government be pleased to state:

(*a*) whether in making appointments the Public Service Commissioner is following the principle of rotation with communal effect; and

(*b*) whether in determining the seniority, the acting services previous to the appointments by the Public Service Commissioner is taken into account?

MR. M. K. NILAKANTA AIYAR: (*a*) Yes.

(*b*) The Member is referred to G. O., R.O.C. No. 4451/37/Genl. dated the 7th May 1938 which contains the rules for determining seniority.

Rules for applying attested copies of Chittas and Settlement Records.

82. * **MR. KOTTALIL P. ABRAHAM:** Will the Government be pleased to state:

(*a*) whether there is any rule prescribed by them to the effect that attested copies of *chittas* or settlement records furnished from the Taluk Offices to applicants shall be written only on Government copying papers, of the value of 3½ chuckrams each, to be supplied by those applicants;

(*b*) whether for copying *chittas* on such applications, any minimum or maximum is prescribed as to the number of copying papers to be used, or as to the number of words or lines to be written on each copying paper;

(*c*) how many copying papers are to be produced by an applicant for an attested copy of the *chitta* for (1) single survey number, (2) two survey numbers, (3) four survey numbers and (4) five or more survey numbers;

(*d*) when copies of *chitta* for several survey numbers are granted on the same application, the least number of survey numbers (with their *chitta* particulars) to be written on the copying papers least necessary for copying the *chitta* for a single survey number;

(*e*) whether they are aware that in attested copies furnished to parties from Taluk Offices, generally the *chitta* for not more than 2 survey numbers only are copied on a page made up of four copying sheets, leaving the rest (almost half) of the page blank, and using additional copying sheets for the remaining survey numbers covered by the same application, thereby causing unnecessary expense to applicants for copies:

(*f*) whether there is kept in the Taluk Officers a register showing, in cases of furnishing attested-copies to applicants, the number of copying sheet (1) called for, (2) used for copying actually, (3) returned, if any, unused;

(*g*) whether the particulars in part (f) above with regard to the number of copying sheets will be entered on the back of the attested Copies given to the applicants; and

(*h*) whether any receipts is given or prescribed to be given to the applicants for copies from Taluk Offices (1) whenever the required copying sheets are produced by these applicants, and (2) whenever money is deposited by way of copying fees when survey plans are copied?

MR. M. RAMACHANDRA RAO:

(*a*) Yes.

(*b*) No, there is no rule prescribing a minimum or maximum number of copying sheets to be used in preparing copies of *chittas* or the number of words or lines to be written on such copying sheets, when *chittas* are copied.

The general rule however is that 175 words should be written on ery page of running matter.

(*c*) (1) to (4) There is no rule prescribing the number of sheets to be produced for copying *chittas*. Four to six sheets are generally required for four survey numbers.

Additional sheets will be required, according to the contents of the *chittas* to be copied.

(*d*) *Vide* answer to part (*c*)

(*e*) No.

(*f*) Yes.

(*g*) Yes.

(*h*) The Rules require that receipts should be given.

APPENDIX I.

Vide Answer to Question No. 76.

Statement by caste of the lady clerks appointed before 30-8-1114 in the Secretariat.

Hindu :		
Nair	...	5
Ezhava	...	3
Christian :		
Jacobite	...	1

APPENDIX II.

Vide Answer to Question No. 77.

Statement by caste of the lady clerk appointed till the 30th Meenom 1114 in the High Court.

A. Hindu :		
Brahmin	...	1
Nayar	...	1
Kammala	...	...
Nadar	...	...
Ezhava	...	...
Cheramar (Pulaya)	...	...
Other Hindu	...	...
B. Muslim		
C. Christian		
Jacobite	...	1 (acted from 20-7-1114 to 29-7-1114.)
Marthomite	...	...
Syrian Catholic	...	...
Latin Catholic	...	...
South Indian United Church		1
Other Christian	...	...

ADJOURNMENT MOTIONS.

PRESIDENT: Order, order. I have received notices of various adjournment motions. I have received specially four adjournment motions with reference to the position in Ceylone:

one by MR. SIVARAMAN NAIR—

"To discuss a definite matter of urgent public importance namely, the serious situation created by the anti-Indian policy of the Ceylon Government. resulting in grave injustice and hardship to a large section of Travancore ans resident in Ceylon'.

another by MR. K. R. NARAYANAN:

"To discuss the serious situation created by the anti-Indian policy pursued by the Ceylon Government which has seriously affected the Travancoreans residing there."

another by MR. PULIYOOR T. P. VELAYUDHAN PILLAI:—

"To discuss the serious a situation especially in Travancore that has arisen out of the decision of the Board of Ministers in Ceylon to dismiss 3,000 Indian employees of Ceylon Government, and their subsequent proposal to enact a legislation whereby the employment of non-Ceylonese by private employers could be restricted by the imposition of a quota system and the levy of a special tax."

another by MR. K. MADHAVAN:—

"To discuss the serious unrest created among the Travancoreans on account of the repatriation policy of the Ceylon Government towards Indians in Ceylon, including Travancoreans."

As is wellknown to honourable Members, under Section 17 of the Statute governing us,

"matters governed by treaties, conventions or agreements now in force or hereafter to be made by our Government with the Paramount Power relations of our Government with the Paramount Power or with Foreign Princes or States"

are removed from the cognisance of this Assembly. At the same time, it will not be right or expedient on the part of this Government to remain oblivious to the state of feeling evidenced by the motions, for adjournment of the House, of which notice has been given to Government. Therefore, while I feel obliged under the provisions governing our procedure to disallow these motions for adjournment, I may assure Honourable Members of this House, both in their individual and representative capacities, that the Government of Travancore are taking every possible means to bring home to the Government of India the seriousness of the situation and the necessity to grapple with it. I may add that there are some features of the situation which I am sure the Ceylon Government will bear in mind in dealing with this matter. It is a fact that at present the rate of duty on what is called Jafna tobacco, the medicinal or gastronomic properties of which evidently appeal to the inhabitants of Travancore, is Rs. 135 per candy of 600 pounds. The corresponding duty in British India is Rs 1650, especially after the recent legislation in a neighbouring Province. The duty realised in the year 1112 was Rs. 5.53 lakhs, and in 1937-38, the next year, it was Rs. 5.76 lakhs. Under the provisions governing this matter the Government of His Highness the Maha Raja of Travancore have jurisdiction to levy a differential duty on foreign tobacco

[President.]

imported into this State. I feel pretty sure that the Ceylon Government will be as much alive as anyone else to the significance of this provision and the posture of affairs, I am sure that the Travancore Government, which in this manner has a special leverage and possibility of action which no other Government in India has, will make legitimate use of it for the purpose of getting adequate, proper and equitable treatment for Travancoreans. Having said so much I disallow these motions.

The next motion is by Mr. Narayanaperumal Nadar " To discuss the serious situation brought about in the country by the recent change in the system of voting which is calculated neither to nationalise the Legislature nor to effect communal harmony.' An experienced member like Mr. Narayanaperumal Nadar knows that under section 17 (1) (b) "The Provisions of this Act and the rules framed thereunder are not admissible for discussion." I therefore disallowand in fact I have no other alternative but to disallow-this motion for adjournment.

The next motion is by Mr. K. Narayanaperumal Nadar

"To discuss the serious situation brought about in the country by the recent institution of the security proceedings against prominent State Congress workers even after Civil Disobedience is given up by the State Congress at the request of Mahatma Gandhi".

I presume. however, that the Honourable Member has adverted to proceedings which have resulted in conviction, and keping that in view, I would now like to know whether the Honourable Member has the leave of the House to make the motion.

MR. P. S. MAHAMED (*Nominated*) : I oppose the motion.

The question that leave be granted for the adjournment motion was put and declared lost as Mr. Narayanaperumal Nadar alone stood up in his place.

The next motion is by MR. C. JABAMONY NADAR which runs thus:—

"That the business of this House be adjourned for the purpose of discussing a definite matter of urgent public importance, viz., Mahatma Ghandi's advice to the Travancore State Congress and his message to the Dewan of Travancore"

In the first place, I am not aware of any message from the Mahatmaji to the Dewan of Travancore. Secondly I am not aware of any advice that the Travancore State Congress has received from Mahatma Ghandi. Certain newspapers have published certain statements on these matters ; the State Congress or any other institution of the kind has not officially sent any communication like the one referred to in the motion to the Government as such. In those circumstances, statements in newspapers which are liable to contradiction have to be ignored. Therefore for the reason that the Government of Travancore have not so far been officially appraised of any advice given by Mahatma Ghandi to the State Congress, and for the reason that the Dewan of Travancore has not so far received any message from the Mahatmaji, I rule the motion out of order.

The next motion is by MR. T. C. KESAVA PILLAI :—

"That the business of the House be adjourned for the purpose of discussing a definite matter of urgent public importance viz., the situation created among the people of Travancore regarding the publication of certain rules under the Hindu Religions Endowment Act III of 1079 in the Government Gazette dated 12th Medom 1114.

I am rather surprised that one of the oldest and most experienced member of this Assembly should have given notice of this motion. It s inadmissible becuuse Devaswoms are beyond the cognisance of the Legislature.

MESSAGES FROM THE SRI CHITRA STATE COUNCIL.

SECRETARY: I beg to report that the following Messages have been received from the Secretary to the Sri Chitra State Council:

Letters dated the 6th March 1939.

From.

The Secretary to the Sri Chitra State Council

To

The Secretary to the Sri Mulam Assembly.

(1)

Sir,

Under Rule 42 of the Travancore Legislative Rules, passed under date the 28th October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting on the 15th Februory 1939 agreed, without any amendments to the Travancore Village Panchayat Courts Act (Amendment) Bill which was passed by the Sri Mulam Assembly at its meeting held on the 9th February 1939.

I have etc.,
(Sd.)
Secretary to the Sri Chitra State Council.

(2)

Sir,

Under Rule 42 of the Travancore Legislative Rules, passed under date the 28th October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting on the 15th February 1939 agreed, without any amendments to the Travancore Revenue Summons Act (Amendment) Bill which was passed by the Sri Mulam Assembly at its meeting held on the 10th February 1939.

I have etc.,
(Sd.)
Secretary to the Sri Chitra State Council.

(3)

Sir,

Under Rule 42 of the Travancore Legislative Rules, passed under date the 28th October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting on the 15th February 1939 agreed, without any amendments to the Travancore Workmen's Compensation Bill which was passed by the Sri Mulam Assembly at its meeting held on the 9th February 1939.

I have etc.,
(Sd.)
Secretary to the Sri Chitra State Council.

(4)

Sir,

Under Rule 42 of the Travancore Legislative Rules, passed under date the 28th October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting on the 15th February 1939 agreed, without any amendment to the Travancore Markets Act (Amendment) Bill which was passed by the Sri Mulam Assembly at its meeting held on the 9th February 1939.

I have etc.,
(Sd.)
Secretary to the Sri Chitra State Council.

(5)

Sir,

Under Rule 42 of the Travancore Legislative Rules, passed under date the 28th October 1932, I am directed to inform you that the Sri Chitra State Council has, at its meeting on the 15th February 1939 agreed, without any amendments to the Travancore Credit Bank Act (Amendment) Bill which was passed by the Sri Mulam Assembly at its meeting held on the 10th February 1939.

I have etc.,
(Sd.)
Secretary to the Sri Chitra State Council.

Acts assented to by His Highness the Maharaja.

SECRETARY : I beg to report that the following Bills have received the assent of His Highness the Maharaja since the last meeting of the Sri Mulam Assembly :—

1. The Travancore village Panchayat Courts Act (Amendment) Bill.
2. The Travancore Revenue Summons Act (Amendment) Bill.
3. The Travancore Workmen's Compensation Bill.
4. The Travancore Markets Act (Amendment) Bill.
5. The Travancore Credit Bank Act (Amendment) Bill.

Statement laid on the table.

MR. M. GOVINDA PILLAI: Sir, under Rule 76 of the Travancore Legislative Rules, I beg to lay on the table the following statement of expenditure authorised by Government under Section 32 of Act II of 1108.

Demand.	Amount in Rupees.	Particulars.
II. Medical.	25,000	To meet additional expenditure under Dieting Charges.
III. Public Health and Sanitation.	4,000	For plague preventive work in the Devicolam Division.
IV. P. W. D.	25,000	For tank restoration works in South Travancore.
VII. Excise.	2,150	Constructional works in the tank poramboke adjoining the Nagercoil Distillery sold to the Travancore Sugars and Chemicals Ltd.
XI. General Administration.	1,213	For the continuance of the office staff and for contingent expenditure in the office of the Special Officer for the revision of the State Manual and for expenses in connection with the journey of the Officer and staff of that office to Madras.
Do.	850	For meeting the expenditure on account of Travelling Allowance to Special Officer for the revision of State Manual and his staff in connection with their visits to Madras and other places.
XIV. Public Service Commissioner.	1,500	For meeting expenditure under Examination charges, in the Public Service Commissioner's Office.
XV. Police.	77,208	For expenditure on account of the appointment of 2,000 special Police Officers for six months from 1st Dhanu 1114.
XVI. Agriculture and Fisheries Dairy Farm.	3,562-14-0	For the purchase of a motor truck for the Dairy Farm

Demand.	Amount in Rupees.	Particulars.
XXIX. Stationery and Printing.	2,250	To meet the special charges incurred for the despatch of the Police Gazette.
XXX. A. Museum	500	For expenditure on account of taking plaster-casts of sculptures in the Sri Padmanabhaswami Temple and for purchasing two stone reliefs from the owner of a private temple at Thrivikramangalam.
F. Preservation of Oriental Literature.	900	For giving bonus to Mr. Sambasiva Sastri for his commentary on Narayaneeyam.
XXXI. 41-Miscellaneous.	10,000	For carrying out measures for alleviating the hardships due to water scarcity in South Travancore.

President's statement.

PRESIDENT: The Government have been for some years trying to deal with the problem of agricultural indebtedness in the State. As early as 9th January 1935 Government appointed the Agricultural Debt Redemption Committee to enquire into the question and to suggest such measures of relief as could be given effect to. Their report was duly considered and two Statutes "the Agriculturists" Relief Act (Act III of 1112) " and "the Credit Bank Act (Act IV of 1113) " were passed into law. Under the former, the Debt Concilliation Boards, and under the latter the Credit Bank were established. Statistics relating to the working of the Conciliation Boards do not, in the opinion of Government, justify the expectation that any appreciable result could be achieved by the system under which the Boards are functioning at present. In the year 1113, there were seven Boards conciliating debts in different centres in the State. While the total number of applications which the Boards had to deal with was 3572 covering a total debt of Rs. 56,26,972, the number of cases in which conciliation was effected and agreements were actually executed was only 241 covering a total debt of Rs. 3,61,084, conciliated for Rs, 2,90,776. This has resulted in a total reduction of such debts only by Rs. 70,308. The

total expenditure incurred by Government for the purpose during the year amounted to Rs. 60,411. The current year's results are no better than the previous years's. As the security offered is inadequate for the relative debts, the Credit Bank, it is reported, is unable to render substantial help to the parties who have effected settlements. Neither the creditor nor the debtor seems to be able or very willing to take advantage of the machinery so far provided by Government. The two Agriculturists Relief Act (Amendment) Bills pending discussion in the Sri Mulam Assembly and the Sri Chitra State Council and the numerous representations made to Government by the interests concerned are clear indications of the urgent desire that, if possible, more effective steps should be taken for the relief of indebted agriculturists. Government also are satisfied that a change in the law and the system of conciliation is necessary.

The enactments now in force in British India and in several of the Indian States recognise and give effect to the element of compulsion in conciliation but the extent to which compulsion is justifiable or expedient is a debatable point The conditions affecting the agriculturists in the State and the problems relating to their indebtedness cannot be said to be uniform in all localities in India, and Travancore presents several special features one of which is the circumstance that many of the creditors are also debtors and that there is no specific money-lending community in the State. The question as to the extent to which legislation may be embarked upon therefore deserves further and closer scrutiny. Government have therefore decided to appoint a Committee to go into the whole question of agricultural and industrial indebtedness and the proper mode of dealing with it and to report to Government their conclusions *inter alia* regarding the extent to which compulsion may be resorted to in scaling down and settling the existing debts, the legal procedure to achieve this end and their suggestions for keeping down the abnormal growth in the volume of future debts that may be incurred by the agriculturists and small industrialists in the State.

The Committee will consist of twelve members of whom M. R. Ry., Dewan Bahadur Rajyasevadurandara V. S. Subramonia Aiyar Avl., will be the Chairman. The Sri Mulam Assembly and the Sri Chitra State Council will elect four representatives from amongst them, three from the Assembly and one from the Council, as members of the Committee. Messrs N. Venkatachalam Aiyar Advocate, Alleppey, K. V. Joseph, Pottankulam, Kanjirappalli, T. Kumara Pillai, Kalkulam, Rao Bahadur Rajyasevanirata Dr. N. Kunjan Pillai, and Mr. C. O. Madhavan; and two officers of Government namely, Mr. M. Ramachandra Rao, Land Revenue and Income Tax Commissioner and Mr. S. Krishna Pillai, Legal Remembrancer to Government are nominated as other members of the Committee.

[President]

It is hoped that this committee will, as soon as possible, produce not only their recommendations but a Draft Bill for considerations by this House. The House will be requested to elect the members to serve on that committee in the course of to day or to-morrow and due notice will be given for the same.

DEMANDS FOR SUPPLEMENTARY GRANTS.

I. Land Revenue and Taxes on Income.

Mr. M. Ramachandra Rao: Sir, I rise to move for a grant of Rs. 3050 for the following items.

(*i*) Additional grant for the T. A. of the members of the Jennikaram Commutation Committee—Rs. 1,150;

(*ii*) Additional grants of Rs. 1,500 under T. A. and of Rs 400 under Anchal charges in the Budget of the Income Tax Department.

In regard to the first item, I wish to submit that a sum of Rs. 1,150 is necessary to meet the T. A. charges of the members of the Jenmikaram Commutation Committee. The original amount sanctioned was Rs. 2,000 and it is found to be inadequate. As T. A. has to be paid to the members of the Committee the allotment is necessary.

As regards the additional grant of Rs. 1,500 under T. A., I have to say that the amount originally saved for the T. A. of Income Tax officers is already spent and the amount now asked for is absolutely necessary. In regard to the additional allotment under Anchal charges, I may say that difficulty is being experienced by the Deputy Commissioner and the three Income Tax Collectors in the matter of despatch of letters and notices to assessees for want of stamps. Correspondence has increased of late and as the provision is exhausted, an additional grant af Rs. 400 is required. I request that the House will accord their assent to this demand.

Mr. K. P. Kochukora Tharakan: ജന്മിക്കരം കമ്മൂട്ടേഷൻ കമ്മററിയെ നിയമിച്ചുകഴിഞ്ഞോ?

Mr. M. Ramachandra Rao: കഴിഞ്ഞു.

President: The question before the House is that the additional grant to the extent af Rs. 3,050 be granted under Land Revenue and Taxes on Income. The motion was put and carried.

The grant was made.

II. Medical.

Vaidyasastrakusala Dr. (Mrs.) M. Poonen Lukose: Sir, I beg to move for a supplementary grant of Rs. 5,500 for the supply of coal gas to the General Hospital, Trivandrum, during 1113 and 1114. The coal gas supply to the General Hospital is being used for sterilising

purposes in the out-patient department, in the Operation Theatre and in the Clinical Laboratory in the General Hospital. Coal gas is also supplied to the Ophthalmic Hospital for the operation room. This supply was started in Mithunam 1112, and was continued in 1113 but it was not possible then to know exactly what amount would be required later on, invoices for the supply of coal gas made to the General Hospital for 1113 was received in Thulam this year. Calculating on this basis, the Superintendent, General Hospital, requires 2,700 Rs. for supply made in 1113 and Rs. 2,800 for 1114. This demand is made for this expenditure. I trust that the House will sanction this additional grant.

PRESIDENT: The question before the House is that a provision of Rs. 5,500 for the supply of coal gas to the General Hospital, Trivandrum, during 1113 and 1114 be sanctioned.

The motion was put to vote and carried.

The grant was made.

XI. GENERAL ADMINISTRATION.

MR. G. NARAYANAN TAMPI: Sir, I rise to move for a grant of Rs. 13,745, under Demand XI, General Administration. This amount is required for payment of water tax to the Trivandrum Municipality, on account of the Public office and allied buildings for the years 1111 to 1114 M. E. The details relating to the assessment of Government buildings, which involved repeated consultation with the Chief Engineer, the Water Works Engineer and the Municipal Council, were settled only towards the close of 1113. It was not, therefore, possible to include the necessary provision in the budget for the current year; and funds are not available for diversion from other sanctioned items. Hence this demand for a supplementary grant. I request the House to vote the amount.

PRESIDENT: The question before the House is that a sum of Rs. 13,745 be granted under 15 A General Administration for payment to the Trivandrum Municipality towards water tax in respect of the public offices and allied buildings for the years 1111 to 1114.

The motion was put and carried.

The grant was made.

XXI. AYURVEDA.

MR. P. PARAMESWARAN PILLAI: I rise to move for a grant of Rs. 1,985 under Demand XXI, Ayurveda, for the construction of two temporary sheds at the Bex Hill Bungalow for the accommodation of the Government Ayurveda College. Due to want of accommodation in the rented buildings at Puthenchanthai where the Government Ayurveda College is at present located it is proposed to shift the College to the Bex Hill Bungalow and its premises. The Bex Hill Bungalow is a Government building, but is not spacious enough to accommodate all the classes. It has therefore been decided to put up two additional temporary sheds in its premises and the grant now asked

[Mr. P. Parameswaran Pillai.]

for is to meet the cost of construction of those sheds. They are so designed and constructed that they can be converted into permanent structures when funds permit. I request that the supplementary grant may be sanctioned.

PRESIDENT: The question before the House is that a sum of Rs. 1,985 be granted for the construction of two temporary sheds at the Bex Hill Bungalow for the accommodation of the Government Ayurveda College.

The motion was put to vote and carried.

The grant was made.

XXII. FORESTS.

MR. P. RAMAN PILLAI: Sir, I move for a grant of Rs. 60,000 on account of additional expenditure under A—Conservancy and Works.

In order to get into proper alignment with the present lines of progressive development and future trends of scientific forest utilization a re-orientation of Forest policy and practice is essential and indispensable. The Forest Department being a quasi-commercial one, naturally the revenue should be proportionate to the expenditure to be incurred.

The year 1113 was a very favourable year from the revenue point of view. It could be said that it was a record figure when compared with the past 8 years. Naturally the expenditure has increased in proportion to the realisation of revenue.

There were several causes which tended to increase the expenditure under this item. In 1113 the monopoly on royalty was removed and the department was obliged to remove all the exploitable trees from Tract No. 2 in the State which involved additional expenditure of money. We have removed over two lakhs of cubic feet from an extensive area of about 2,500 square miles which cover this tract.

The second reason for the increase of expenditure was that we had to remove teak trees from 700 acres of land surrendered to the Edapalli Chief since the area fell in tract No. 2. The quantity of timber removed was about 1,70,000 cubic feet. The expenditure was not fully provided for when the budget for 1114 was prepared.

The third reason is in connection with the extensive development in electric transmission and distribution and the extension of the Main Telephone Trunk Line. The department had to supply a large number of teak saplings to replace the iron posts which had been imported. It was possible to supply a very large number of saplings which necessitated an expenditure of Rs. 11,500 against Rs. 3,000 budgetted for.

As per the requisitions of the Director of Development large quantities of timber had to be supplied for demonstration of engineering designs and competitive structures of Ascu treated timbers. These works could not be provided for in the budget and therefore have necessitated additional expenditure over the budget provision.

Thus it will be clear to the Honourable Members of this House that the department had to take up large number of works which necessitated additional expenditure which was not thought of when the budget was prepared. The expenditure till the end of Medom is over Rs. 3,43,000 against the budget allotment of Rs. 4,68,300 which leaves behind only about Rs. 1,25,300 for the rest of the year. We have to run three more months. The major quantity of timber has to be delivered and we have to take advantage of the floods in the rivers and supply the softwood timbers to several companies. It will thus be clear from the figures that the demand asked for is the minimum amount required. I may also assure the Honourable Members that the amounts which I have asked for will be well spent and profitably utilised in increasing the revenue of the State. For these reasons I request the Honourable Members to be pleased to sanction the money asked for.

MR. KAINIKARA M. PADMANABHA PILLAI (*Changanacherry* cum *Peermade*): In the light of the explanation given by the Conservator, I would like to know whether the amount now demanded has been already spent?

MR. P. RAMAN PILLAI: The amount has not been spent.

MR. KAINIKARA M. PADMANABHA PILLAI: But the member has been telling us that the additional expenditure has been incurred.

PRESIDENT: I suppose he meant that certain additional expenditure has been incurred and with the budget figures the operation of the Department could not be carried out till the end of the year and hence this additional demand.

MR. K. P. KOCHUKORA THARAKAN: ഈ തുക ഈ കൊല്ലത്തിൽ ചിലവു ചെയ്യേണ്ട ഇനമാണോ അതല്ലാ ചിലവു ചെയ്ത ഇനമാണോ?

MR. P. RAMAN PILLAI: ചിലവായിക്കഴിഞ്ഞതല്ല. ചിലവാകാനുള്ളതാണ്.

MR. K. P. KOCHUKORA THARAKAN: ഈ അഞ്ചാറുമാസത്തിനകം മുഴുവനും ചിലവാക്കേണ്ടതാണോ?

MR. P. RAMAN PILLAI: അതെ.

PRESIDENT: The question before the House is that Government be granted a sum of Rs. 60,000 under Demand XXII—Forests, on account of additional expenditure under Conservancy and Works.

The motion was put to vote and carried and the grant was made.

XXIV. STAMPS.

MR. M. GOVINDA PILLAI: I beg to move for a grant of Rs. 600 under Stamps. Since the passing of the budget for 1114 the question of improving the design of the stamps and stamp papers was engaging the attention of Government and Government finally decided to issue an improved design in stamps and stamp papers. Accordingly plants

[Mr. M. Govinda Pillai.]

have already been ordered and the first consignment of plants has arrived and part payment has already been made. The payment has been made by diversion of funds. An additional expenditure of Rs. 600 is essential to carry out the normal activities of the Department and hence this demand.

PRESIDENT: The question before the House is that Government be granted a sum of Rs. 600 under Demand XXIV—Stamps, on account of additional expenditure under contingencies 'purchase of machinery, tools,' etc., in the budget of the Stamp Manufactory.

The motion was put to vote and passed and the grant was made.

XXX. F. Preservation of Oriental Literature.

MR. M. K. NILAKANTA AIYAR: I rise to move for a grant of Rs. 625 under demand XXX F Preservation of Oriental Literature. This amount of Rs. 625 is made up of three items; Rs. 465 on account of maintenance charges due to the owner of the house on which the curator's office was held for 1113 by virtue of the agreement entered into with him Rs. 100 on account of installation of telephone in the Curator's Office in 1114 and another Rs. 60 on account of arrears of scavenging fees in the Curator's Office from 10th Kanni 1113 to the end of Kanni 1114. As regards the first item, although there was provision for the expenditure in 1113 the amount could not be paid before the end of the year owing to certain correspondence between the owner who did the work and the Curator. Consequently the matter was referred to the Chief Engineer. By that time the year was out and hence the inability to incur the expenditure in 1113.

PRESIDENT: The question before the House is that Government be granted a sum of Rs. 625 under Demand XXX. F Preservation of Oriental Literature.

The motion was put to vote and passed and the grant was made.

XXXI. Miscellaneous charges.

MR. M. K. NILAKANTA IYAR: I rise to move for a grant of Rs. 720 under Demand XXXI Miscellaneous charges for payment of water tax to the Trivandrum Municipality in respect of the Victoria Jubilee Town Hall for the years from 1111 to 1114 M. E. Mr. G. N. Tampi has already explained to the House the reason for the accumulation of the arrears of water tax from the year 1111 to 1114.

MR. K. P. KOCHUKORA THARAKAN: ഈ അരിയേഴ്സ് കിടക്കാനുള്ള കാരണമെന്താണ്?

MR. M. K. NILAKANTA AIYAR: മി: തമ്പി അതിനെക്കുറിച്ച് വിശദമായി പറഞ്ഞിട്ടുണ്ട്.

MR. K. P. KOCHUKORA THARAKAN : അതു ഞാൻ കേട്ടില്ല. അതു കൊണ്ടാണ് സപ്ലിമെൻററി ചോദ്യം ചോദിക്കാൻ ഭാവിച്ചതു്.

MR. PADIYARA JOSEPH KUNJU : സാർ, ഒരു പായിൻറ് ഓഫ് ഓർഡർ. ഏതെങ്കിലും ഒന്നിനെക്കുറിച്ച് ചോദ്യം ചോദിച്ചാൽ മററൊരാൾ അതിനു മറുപടി പറഞ്ഞിട്ടുണ്ടെന്നു പറയുന്നതു ശരിയാണോ?

PRESIDENT : After all, he is drawing attention to his oracular difficulties.

MR. M. K. NILAKANTA AIYAR : മുനിസിപ്പാലിററിയും വാട്ടർവർക്സ് ഡിപ്പാർട്ടുമെൻറും തമ്മിൽ അസസ്സ് ചെയ്യുന്നതിനെപ്പററി തർക്കമുണ്ടായിരുന്നു. അതുകൊണ്ട് അപ്പോഴപ്പോൾ കൊടുക്കാൻ സാധിച്ചില്ല. അതു് ൧൧൧൫-ൽ ആണ് തീരുമാനം ഉണ്ടായതു്.

MR. K. P. KOCHUKORA THARAKAN : അതു് രാജിയിലാണോ അവസാനിച്ചതു്?

MR. M. K. NILAKANTA AIYAR : അതു് രാജിയായിത്തന്നെ അവസാനിച്ചു.

MR. KOTTALIL P. ABRAHAM : May I know why this building alone was left in arrears?

MR. M. K. NILAKANTA AIYAR : മററു കെട്ടിടങ്ങൾക്കും കുടിശ്ശിഖയുണ്ട്. ഏതാനും സർക്കാർ കെട്ടിടങ്ങൾക്കുവേണ്ടി മിസ്റ്റർ G. N. Thampi Supplementary ഗ്രാൻറു ചോദിക്കയും ഈ House അനുവദിക്കയും ചെയ്തു. ഈ കെട്ടിടത്തിനെ സംബന്ധിച്ച ചിലവു പ്രത്യേകം ബഡ്ജററു ഹെഡിൽപ്പെട്ടതാകയാൽ പ്രത്യേകമായി സപ്ലിമെൻററി ഗ്രാൻറു ചോദിച്ചിട്ടുള്ളതാണ്.

PRESIDENT : The question before the House is that Government be granted a sum of Rs. 720 under Demand XXXI—Miscellaneous charges—for payment of water tax to the Trivandrum Municipality in respect of Victoria Jubilee Town Hall for the years from 1111 to 1114 M. E.

The motion was put to vote and passed and the grant was made.

LEGISLATIVE BUSINESS.

THE TRIVANDRUM CITY MUNICIPAL BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI (*Legal Remembrancer*) : I beg to present the report of the Joint Committee on the Trivandrum City Municipal Bill. Under the standing orders, motion will be made for the consideration of the Bill after the report is presented to the other Chamber as well.

APPOINTMENT OF A MEMBER TO THE JOINT COMMITTEE ON THE TRAVANCORE DISTRICT MUNICIPALITIES BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that Mr. P. N. Nilakanta Pillai be nominated as a member of the Joint Committee on the Travancore District Municipalities Bill in the place of Mr. P. S. Muhammed.

The motion was put and carried.

THE TRAVANCORE MEDICAL REGISTRATION BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I rise to present the report of the Select Committee on the Travancore Medical Registration Bill. I wish to make a few observations before I proceed to make the motion relating to the Bill as revised by the Select Committee. When this Bill was referred to a Select Committee a few years back, it appeared to have been the opinion of some members of this Assembly that the scope of the Bill must be enlarged for the purpose of bringing within its ambit Homeopathic practioners and Ayurvedic physicians practising in the State. Much was said in support of that proposition. But the member in charge of the Bill vehemently opposed it and finally said that such matters will have to be considered separately. On this understanding the opinion of the House was ascertained. The scope of the Bill, as I said, was adopted and the Bill was referred to a Select Committee. The Select Committee have therefore confined themselves to the question as to what extend and in what manner allopathic practioners should be brought under control. I make this observation because I find that even at the present moment there appears to prevail some feeling that Homeopathic doctors and Ayurvedic physicians should also be brought under control. Several amendments have been tabled to that effect. When those amendments are taken up for consideration I will have to raise my objections to them. With these observations, Sir, I move that the Bill as revised by the Select Committee be taken up for consideration.

MR. C. V. CHANDRASEKHARAN: I second it.

MR. J. E. A. PEREIRA (*Commerce and Industry South*): Sir, we on this side of the House cannot hear anything that is said. I therefore suggest that the member in possession of the House may come to the centre of the Hall and speak.

PRESIDENT: The honourable member will recollect that one or two alternative methods of seating arrangements were devised. I suppose by the other system of sitting longitudinally we could hear better.

MR. J. E. A. PEREIRA: I would be more convenient if the member addressing the House comes to the centre.

PRESIDENT: There has been considerable amount of difficulty experienced elsewhere by following that procedure. Probably the honourable member is not aware of it. But arrangements will be made for tomorrow's meeting that the benches are longitudinally arranged as it was at one time. In the meantime, I will not stand in the way of any member coming to the centre so that he may be better heard by other honourable members.

PRESIDENT: The motion before the House—I hope I am heard—is that the Travancore Medical Registration Bill, as it is passed through the Select Committee be taken up for consideration.

The motion was passed.

Clause 1.

The question that Clause 1 do form part of Bill was put and carried.

The Clause was added to the Bill.

Clause 2.

The question that Clause 2 do form part of the Bill was put and carried.

The Clause was added to the Bill.

Clause 3.

MR. P. NARAYANA PILLAI: I beg to move the following amendment:—

"In Clause 3, sub-clause (5), between the words "practising the" and the words "allopathic system" insert the words "ayurvedic, homeopathic or" and at the end add the words "or any other system of medicine or surgery or obstetrics or any of their branches to which it may be extended by notification published by Our Government in that behalf in Our Government Gazette."

MR. PUTHUPALLY S. KRISHNA PILLAI: I rise to a point of order. This and amendments 2 to 9.—

PRESIDENT: The honourable member may confine his remarks to this amendment.

MR. PUTHUPALLY S. KRISHNA PILLAI: This amendment is out of order. It proposes to bring about a change in clause 3 of the Bill so that the scope of the Bill as accepted by this House on an earlier occasion and acted upon by the Select Committee afterwards may be enlarged. The Bill, as it now stands, proposes to deal only with practitioners following the allopothic system of treatment. The honourable member Mr. Narayana Pillai wants to enlarge the scope of the Bill by bringing in Homeopathic doctors and Ayurvedic physicians. This is contrary to the standing orders on the subject, the previous rulings of the Chair and also the practice obtaining in the House of Commons.

PRESIDENT: The honourable member may perhaps usefully refer to the situation elsewhere in India where it has been found possible to bring within the scope of the Medical Registration Bill any other system of treatment.

MR. PUTHUPALLY S. KRISHNA PILLAI: I have come across two cases, one in Indore State and the other in the Baroda State. There all these systems have been dealt with together. Elsewhere different systems are dealt with separately. In Indore and Baroda it was not difficult because the original Bill itself dealt with these matters and conditions there are different from the condition here, but as I have already Stated the scope of the Bill as it was presented and adopted here has been different. It was pointed out then by several members that the scope of the Bill must be enlarged, but the member in charge refused to do it. Finally the Bill that was adopted by this House was referred to a Select Committee and the Law Member made the statement that other matters which the members discussed should be dealt with separately. He was against the inclusion of these matters in this Bill and therefore the Select Committee have not gone into this question because it was beyond their powers.

The rulings Nos. 90 and 91 are quite clear on this point and the practice obtained in the House of Commons is also referred to in those rulings. When the Ezhava Bill was under debate one honourable member wanted to extend the scope of the Bill—i. e. after the Select Committee Report was received—so that the members of all the communities following the Marumakkathayam Law should be brought within its ambit. But that motion was ruled out of order. Similarly when the Agriculturists Relief Act was considered in this House motions to extend the scope of the bill were ruled out of order. At page 404 of "May's Parliamentary Practice" it is said that amendments are out of order if they are "beyond the scope of the bill."

As the Select Committee has considered the Bill after its scope was determined by the House an amendment for the purpose of including the Homeopathic and Ayurvedic Physicians in this bill is completely out of order. Therefore I oppose the motion.

MR. P. NARAYANA PILLAI: Sir, the object of this bill is to protect the public from incurring risks at the hands of incompetent Medical Practitioners. Therefore all sorts of Medical Practitioners should be included within its scope.

PRESIDENT: The honourable member will kindly address himself to the question arising out of the point of order.

MR. P. NARAYANA PILLAI: Sir, my amendment is intended to include all the Medical Practitioners. In any case I invite the ruling of the Chair in this matter.

PRESIDENT: Order, Order. My ruling has been invited on this point of order. The decision seems to be fairly clear. The bill, as it was discussed and debated upon and committed to the Select Committee purported to deal with the allopathic system of medicine. The Select Committee's labours therefore have been devoted to the consideration of the bill as it emerged from this House. It is a well-known and well-understood practice that the scope of a bill as it has gone into the Select

Committee cannot be enlarged at this stage of further consideration. And I also find as has been pointed out by the learned Legal Remembrancer that the point has been conclusively decided under authority under rulings 90 and 91 of this Honourable House. Quite apart from this it may be pointed out to the honourable members that they will realize that the question of regulating the Homeopathic system of medicine or the Unani system of medicine is very different. The questions as to the maintenance and upholding of standards and as to the degrees or tests of the various practitioners and as to the ruling out of those practitioners who did not go through scientific institutions and qualified in those institutions are involved in this. And until a comprehensive enquiry into the methods of those systems in the matter of laying down and enforcing standards of education and of practice in the refining of drugs and the production of appliances is conducted, it will not be possible effectively to bring into existence the regulation pertaining to these practitioners in the manner in which the regulation is framed regarding the allopathic practitioners who are working under a system which is fairly well regularised and systematised and co-ordinated. I therefore hold that it is inexpedient as a matter of ordinary legislation to deal with that now and I find that the honourable member is out of order in moving this amendment.

MR. S. NARAYANA PILLAI: Sir, under standing Order 27, I beg to move that the business of the House be postponed and that the Assembly pass to the business next in order in the statement of business. My object in moving this motion......

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, on a point of order. I moved that the bill as revised by the Select Committee be taken into consideration. It was then opened to the honourable member to move for a recommital of the bill once more to the Select Committee. My motion was adopted by the House and the motion for a recommittal now is out of order. It would have been open to the honourable member at that time to move that the bill as advised by the Select Committee should not be proceeded by this House either in respect of a particular clause, or in respect of the entire provisions contained in the bill. The honourable member is, I am afraid, a few minutes too late.

MR. S. NARAYANA PILLAI: Sir, under Standing Order 27 I am entitled to make this motion with the consent of the President at any time. I beg to move for an adjournment of the business of this House if possible to consider this bill afresh. At the time the motion was made by the honourable Legal Remembrancer some of the members or rather most of us thought that some suitable amendments were possible. The amendments were ruled out of order. As it now appears that these amendments cannot be adopted I bring forward this motion to consider the question again.

PRESIDENT: In other words the honourable member means that this meeting is adjourned and it would be much better to have a comprehensive bill.

MR. T. C. KESAVA PILLAI: (*Kalkulam cum Vilavankod*) Sir, I second the motion.

[Mr. T. C. Kesava pillai.]

In seconding the motion for the adjournment of the House I have to submit the following for the kind consideration of this House. in Travancore there are many systems of treatment. The English system of treatment was introduced only 60 or 70 years back. It took its root in the place and now it has extended to the poor man's cottage. Our Government gave maximum encouragement to this system of medicinal treatment and now we have got all sorts of experts in this branch of medicine. Unfortunately though big amount is expended yearly, adequate benefit is not now derived by the ordinary labourer or the poor people. These people are now in the grip of Ayurvedic physicians and Sydha Vaidyans who prepare mercury poisons and other opium tinctures and administer them freely to these people. So there is nobody to take the death rate also. As I once observed, the whole matter is now with the one Doctor *i. e.* God. If at all we intend to introduce any legislation it should be perfect and comprehensive, because a major portion of the allopathic doctors are harmless individuals. They really do good to the country. But at times they are hard-hearted and the poor man could not approch them. But the starving Ayurvedic and Sydha Vaidyans would treat anybody for any kind of disease for a pittance. But most of the *Bhasmans* and medicines are poisonous. Suppose we introduce this legislation now, the so-called allopathic doctors will surely be recognised and the compounders and other like people who profess to know everything in medicine will not be recognised and they will be forced to change their garb and become Ayurvedic and Sydha Vaidyans to continue their practice without any trouble.

PRESIDENT: Don't they do so now?

MR. T. C. KESAVA PILLAI: They do it. So, Sir it is highly necessary to include the Ayurvedic and other systems of treatment also within the scope of this bill.

There is a natural reluctance on the part of the allopathic doctors to admit the fact that the Ayurvedic system of treatment is more efficient than theirs in the treatment of certain ailments such a rheumatism and malaria. There was a betting of thousand rupees to the effect that the sum will be given if any suitable remedy in allopathy is found for treating malaria. I know as a matter of fact eminent doctors in allopathy have recognised the efficacy of Ayurvedic treatment on certain diseases. The late Dr. Henry of Nagercoil was one who recommended Ayurvedic treatment to his patients in certain conditions. It is true Sir, that there are certain diseases which could be cured by Sodium salicitas. There are other diseases which could be treated by *thikthakam* and other *Kazhayams*. What I submit is that this bill should cover all these kinds of treatment, so that it would be a check to the vagaries of these Ayurvedic, Unani and other Vaidiyans. These Vaidyans can be given licenses as we issue licenses to the Vernacular

School Teachers. Big doctors should be given big licenses and small doctors small licenses. With these words I fully support that not only the bill should be adjourned but if possible the president should even see that it is referred to the Select Committee with new members. With thess words, I support the motion.

DEWAN BAHADUR DR. V. VERGHESE (*Co-opted*) : Have I permission, Sir, to speak?

PRESIDENT : Well, Oh Yes.

DEWAN BAHADUR DR. V. VERGHESE : Sir, I rise to oppose the motion for adjournment. The aim of the honourable member who proposed the adjournment seems to be that this bill should be made comprehensive enough to include within its scope the Ayurvedic, Homeopathic, Unani and other systems that are in vogue in this country. If that be really the object of this adjournment motion now before the House, I strongly object to it for reasons which I shall adduce at present. I believe that this motion arises from a lack of conception of what object is met by medical registration. Medical registration has, as its back ground a scheme of a prescribed course of scientific, and professional study with simultaneous training in a large hospital and at the end of the course to pass a prescribed standard test, and obtaining a degree or diploma which is a passport for a career as a medical practitioner. In the modern scientific medicine which is popularly known as allopathic but incorrectly so designated there is a basis of a standard of study, training and test. It is not only in the matter of medical registration but also in all the professions which require a licensed practice this principle has been adopted. In the profession of law no man will be allowed to practice in a court unless he has fulfilled the condition of study, training and test. Any mere knowledge of Hindu Law or Mohammedan Law will not entitle a man to practice in a court of law. In all professions there is a standard to go by. It is just this absence of standard either in study, training or test in the Ayurvedic and Homeopathic system of medicine as they are practised now which makes it difficult to register those practitioners as it is intended in the case of allopathic practitioners.

The principal reason of the undesirability of tackling all these other systems is that there is no recognised course of study in those systems. The study of medicine is based on a previous intensine study of the basic sciences such as Chemistry, Physics, Physiology and Anatomy. Of course, in the Benares University Pandit Madan Mohan Malavia, than whom there is no stronger or more ardent advocate of the Ayurvedic system of medicines, has established an Ayurvedic College where he has introduced a course of six years' study, the earlier years of which will be spent in the study of Chemistry, Bacteriology and other basic sciences. Now, I am sure, when the graduates of that University come out they will certainly be recognised as a corporate race. That University does not give room for that hostility between the western and Ayurvedic systems and I think there is no bridge between the two. The votaries of both western system of medicines and Ayurveda have come to realise that there is or can be only one universal

[Dewan Bahadur Dr. V. Verghese.]

medical science. There cannot be a separate science for 'the Hindus or the Mahomedans or for any other caste. Now, the position in civilised countries, such as China, Russia, Turkey and Japan which have adopted modern methods is that they have brought in this legislation. They are countries with ancient civilisation. They have adopted whatever is good into their system. They do not make a distinction between Chinese medicine or Japanese medicine. All true followers of science recognise that there can be only one system and they follow that. I am not at all very much in favour of the term, Allopathic medicine; I would rather call it modern scientific medicine. The recognition of what is good in the Ayurvedic medicine and the large body of scientific men who are making research work into the properties of various drugs will be found useful for the formation of an organised system of medicine. Scores of medicine that belong to this country are now, in recent years, recognised as medicines. We are now trying to introduce a form of communalism, which procedure I do not really think scientists will compromise. I do not think that there is any object in turning down this Bill for another time. In any short time, there is not likely to be a recognition for Ayurvedic medicine sufficient as to incorporate it into the methods of the modern scientists.

MR. T. C. KESAVA PILLAI: May I know the percentage of patients undergoing Ayurvedic treatment or Allopathic treatment in Travancore? Out of the total number of population, may I know the total number of individuals now under Allopathic treatment?

PRESIDENT: Order, order. I do not think that the rate of relative or comparative mortality as between persons subjected to different methods of treatments is really pertinent to this particular question. The matter is whether the consideration of the Medical Registration Bill, in so far as it is confined to the Allopathic system, should be postponed in order to allow for the organisation of the system. That is the object of the mover. I would request the honourable members to devote their questions to that aspect of the matter.

It is exactly that point which I wish to elucidate to this House. There is really no object in trying to postpone this Bill to any reasonable period because it is, as it stands now an incompatible mixture as we would say. The present system of advanced scientifiic medicine and the present stage of ayurvedic or homeopathic system are absolutely incompatible. Anything that is good in them will surely be incorporated into the modern scientific system. But to jumble them together is something like this. Supposing in these days of motor traffic a union of bullock-carts men join together and cry to incorporate them into a scheme of licensed transport. There is as much difference between the bullock-cart and the motor car as there is between modern scientific medicine and other systems of medicines. I do not want to decry anything good in the homeopathic or Unani systems of medicine. There is something good in those systems, but they are not as organised as the allopathic system. Has the homeopathic or the unani practitioner familiarity with the functions of the internal organs? Has he

any scientific knowledge of the different functions of the organs inside the humrn body? How could you expcct a man like that to be classified with those who have followed modern science? It is impossible to issue license for repair of motor cars without a knowledge of the internal combustine work of the engine An Ayurvedic man who has no knowledge of the functions of the bodily organs cannot be expected to do repair work in the human system. If he does that it is only by the rule of thumb that he can do so. But as a system to be incorporated into the allopathic system so as to effect co-registration with modern science, the ayurvedic system or the homeopathic system has to wait. So an adjournment motion on this account would be only turning out this Bill altogether, because there would not be any occasion in the near future to incorporate these two systems together. The urgency for introducing this Bill is that the danger to the public is growing more and more because of the practise of the allopathic medicine by unqualified men. A large body of men who are a source of possible danger to the men who have set up practices on modern lines have sprung up. The amount of harm that these allopathic quacks are doing would necessitate a separation of allopathic practitioners and I believe, there is no real point in postponing this measure.

MR. KOTTALIL P. ABRAHAM: Cannot we expect allopathic quacks?

DEWAN BAHADUR DR. V. VARGHESE: I was saying that the danger to the public owing to the existence of ayurvedic quack is very great and there is no necessity for postponing the consideration of the passing of this legislation. It is not likely that you will ever be able, in the near future, to incorporate the ayurvedic system. Efforts are being made all over India to take all the good from the allopathic system and incorporate them into modern scientific practices; but homeopathy will never come into such eminence. Every man here is a homeopathic practitioner, and we will have to legislate for one third of the population of Travancore. This is an impracticable proposition which is not likely to assume fruition in any near future. So I think it will be immproper to postpone the consideration of this Bill.

MR. JOSEPH VITHAYATHIL (*Kunnatnad* cum *Parur*): Sir, standing order 27 contemplates two kinds of motions, *i. e.*, one for the postponement of the particular business and the other for passing on to the next item of business in the statement of business. If the motion is of the second kind the effect of passing it will be to throw out the Bill.

PRESIDENT: The motion before the House now is that the consideration of the Bill should be postponed, that is all. I am informed that the amendment is for passing the motion not in order.

MR. JOSEPH VITHAYATHIL: That means that this business will have to be disposed of at another meeting of the Assembly.

PRESIDENT: Well, it would not come up later.

DR. G. RAMAN PILLAI (*Co-opted*) : I am against the postponement of the consideration of this Bill. There is an urgency for the Allopathic Registration. Because a "Medical Practioner" now practices any system. The Allopathic system will prove dangerous if entrusted in the hands of unqualified hands who come in as practitioners now-a-days. Allopathy is more extensively practised than others and it is ripe for such registration. It is fully organised with statutory bodies for teaching, examining and controlling. It enjoys extensive patronage by the State and therefore is badly in need of better control. This system has grown in rapid strides. A system can be registered if there is a statutory body working it. Bogus qualifications must be abolished and the qualifications must be fixed on a regular and scientific basis. It is only after such developments within the system that it can come in for registration. So, first of all, organisation and education should be the problem of the Unani, the Homeopathic or the Ayurvedic systems. The Allopathic system cannot wait till the other systems are statutorily organised. Unauthoris d people manufacture Homeopathic preparations, and they issue diplomas to candidates. Such a system cannot be registered along with the Allopathic system. The Ayurvedic system may be tackled next. But Unani and Homeopathy have to wait until they are organised.

Sir, other provinces have forged ahead, I mean, Madras and Bombay. Even in Mysore they have introduced the system of registration from 1931. We have not as yet begun to legislate in this direction.

The objection to the postponement is very clear; other systems have taken to practise Allopathic methods without qualification. It is now possible to get a bogus degree of another system in order to practise Allopathy, especially as we have no legislation to prevent bogus qualifications. The systems differ considerably, and co-registration of systems is therefore unworkable. They are dissimilar in their concepts of the theories and hypotheses. The terminology of each system is different from that of others. Their language is mutually unintelligible. A medical council so composed is practically impossible. If we combine the systems together, some of the members of the Medical Council would have to unlearn many things which they have already learned. Then again, there is such jealousy between the practitioners of the various systems that if we combine them under one Council, the result will be prejudicial to the allopathic practitioners.

MR. KOTTALIL P. ABRAHAM : Will it not be enough to appoint a separate Council or Sub-Committee to the council as contemplated in the present Bill for the Unani Homeopathic and other systems of medicine ?

DR. G. RAMAN PILLAI : Sub Committees may be appointed. It may be possible, but all the systems will be kept distinctly apart. The Indian Medical Degrees Act of 1916 specified, under Section (2), that the indigenous systems and Homeopathy are excluded from its purview. The Bombay Medical Practitioner's Act which received consent of the Governor General in 1938, provides for separate registration of Allopathy and other systems of medicine.

[The Assembly adjourned for lunch at 1 P. M., and reassembled at 2 P. M.]

DR. G. RAMAN PILLAI: In opposing the motion for postponing the present Bill, I was dealing with the urgent need for immediately introducing a measure of this kind, and submitting that there is no advantage to be gained by postponing the consideration of the problem. As I said, Sir, a multilingual Medical Council would be needed if we were to introduce within the purview of this measure all systems of medicine now in vogue. That, I submit, is not a practical proposition since the members of the Medical Council, if they are to function properly, would have to take lessons in all systems of medicine.

I may submit, Sir, that each system of medicine has its own, distinct nomenclature for the various diseases. That, by itself, would be a problem for the members of the Medical Council. And then, there is very great difference in the pharmacopoea, and even in the doses. In Homeopathy, for instance, the dosage is very small compared with allopathy.

Moreover, most of our Indian systems of medicine have yet to be organised, each one, by itself, is ill-organised. It would be better that they are first organised well, before they are all combined and brought under a measure of the kind now before the House. It cannot be denied that, especially in the matter of education and examination, allopathy is fairly well organised; there is practically no room there for bogus degrees. Bogus degrees are, unfortunately, common in other systems of medicine which are yet not under the full control of the Government. Organisation is certainly a condition precedent to recognition and registration. It is unfair to allopathy to group it with systems which have not so far been able to eschew bogus diplomas.

Further, Sir, there is the very great risk of professional Jealousy between practitioners of different systems.

MR. S. NARAYANA PILLAI: May I know whether there is no jealousy between allopathic doctors?

DR. G. RAMAN PILLAI: Already the Allopathic system itself is not absolutely free from jealousy, but, if it is combined with other systems there will be further jealousy, not only between members following the same system but between those following different systems. There will be no harmony, and frequent intercession by the Government would become inevitable.

Then again, Sir, which is the authority on whom the responsibility should lie for default on the part of the Medical Council? Let us take it that the Surgeon General should be vested with such authority. In that case, the Surgeon General would have to be one well versed in all the systems of medicine. That, again, is an impracticability.

In this connection, I may mention that the policy of the Government of India and of the Provincial Governments has been to keep allopathy separate and distinct from other systems of medicine. The Indian Medical Degree Act of 1916 specifically excludes Indian systems

[Dr. G. Raman Pillai.]

of medicine, and aso Homeopathy; the Provinces in Madras and Bombay too have separated allopathy from other systems. The new Bombay Medical Practitioners Act of 1938 is the latest example of such legislation. In this Act the Indian systems come under a statutory Board and the Homeopaths have in future to be trained and examined as prescribed by the Government. Bogus diplomas are avoided. The Bombay Act thus restricts the practice of allopathy to duly qualified Allopaths alone.

I submit, Sir, for each system to develop and enlarge, it is better that it has an organisation of its own. Attempts to mix with others do not promise facilities for self-development. There cannot be any doubt that a Homeopath can control his system better than an allopath or an Ayurvedist. That is true with reference to every other system also.

Sir, reference has been made to Indore and Baroda. But, it is too early even for us to know and realise the defects of the arrangement there. Further, perhaps the systems of Indian Medicine are better organised there, under statutory bodies, in point both of education and examination But, considering local conditions, I submit, it is better that allopathy is given a separate treatment and not allowed to retard its progress by a mixture with other systems which have yet to be organised on proper lines.

With these words, I oppose the motion for the postponement of the consideration of the Bill.

MR. THARIATHU KUNJITOMMAN (*Muvattupuha* cum *Devicolam*): സർ, ഈ ബില്ലിന്റെ പര്യാലോചന നിറുത്തിവയ്ക്കുന്നതിനായി കൊണ്ടുവരപ്പെട്ടിട്ടുള്ള ഉപക്ഷേപത്തെ ഞാൻ ബലമായി എതിർക്കുന്നു.

ഏതൊരു നിയമവും ഭൂരിഭാഗം ജനങ്ങൾക്കു അധിക ഗുണപ്രദമായവിധത്തിൽ ഭരണത്തെ നയിച്ചുകൊണ്ടുപോകുന്നതിന് ഉതകേണ്ടവയാണല്ലൊ. ഈ ബില്ലിനെപ്പറ്റിയുള്ള പര്യാലോചന നിറുത്തിവയ്ക്കുന്നതിനുള്ള പ്രധാനകാരണമായി ഇവിടെപറഞ്ഞതു ഈ ബില്ലിന്റെ നിയന്ത്രണത്തിൽ ഉൾപ്പെടുത്തിയിട്ടുള്ളതു് അലോപ്പതി വൈദ്യന്മാരെമാത്രമാണെന്നും, ആയുർവേദം, യൂനാനി, ഹോമിയോപ്പതി മുതലായ വൈദ്യക്രമങ്ങളനുസരിച്ചു് ചികിത്സ നടത്തുന്ന വൈദ്യന്മാരെക്കൂടി ഉൾപ്പെടുത്തേണമെന്നുമാണ്. അങ്ങിനെ ഒരു ബിൽ അവതരിപ്പിക്കുന്നതിനായി ഈ ബില്ലിനെപ്പറ്റിയുള്ള പര്യാലോചന നിറുത്തിവയ്ക്കണമെന്നു പറയുന്നു. ഇങ്ങനെ ആയുർവേദം, ഹോമിയോപ്പതി മുതലായ വൈദ്യക്രമങ്ങളനുസരിച്ചു ചികിത്സ നടത്തുന്ന വൈദ്യന്മാരെ നിയന്ത്രിക്കുന്നതു കൊണ്ടു ഭൂരിപക്ഷം ജനങ്ങൾക്കും ഗുണമല്ലാ, ദോഷമാണുണ്ടാകാനിടയുള്ള

തെന്നാണ് എന്റെ വിനീതമായ അഭിപ്രായം. അലോപ്പതി വൈദ്യക്രമത്തിൽ ഉന്നതപരീക്ഷാവിജയികളായ ധാരാളം ആളുകൾ ഇപ്പോൾ ഉണ്ടു്. ഇങ്ങനെ ഒരു നിയന്ത്രണം ഒരു നാൽപതു കൊല്ലത്തിനു മുൻപാണ് കൊണ്ടുവന്നിരുന്നതെങ്കിൽ അന്ന് അതുകൊണ്ടു് ജനസാമാന്യത്തിനു ഉപദ്രവം ഉണ്ടാകുമായിരുന്നു. അന്ന് കൈവിരലുകൾകൊണ്ടു് എണ്ണത്തക്കവണ്ണമുള്ളവരേ, അലോപ്പതിക്രമത്തിൽ പരീക്ഷാവിജയികളായി ഉണ്ടായിരുന്നുള്ളു. ഇന്നത്തെ സ്ഥിതി അതല്ല. അതിനാൽ പരീക്ഷാവിജയികളല്ലാത്തവർ ചികിത്സ നടത്തരുതെന്നു ഇന്നു നിയന്ത്രിക്കുന്നതുകൊണ്ടു ജനസാമാന്യത്തിനു ദോഷമൊന്നും വരാനില്ല. ആര്യവൈദ്യത്തെയും ഹോമിയോ വൈദ്യത്തെയുംപററി പറയുകയാണെങ്കിൽ ഇവകളിൽ പരീക്ഷാവിജയികൾ ഇന്നു വളരെ കുറവാണ്. വൈദ്യവിഷയത്തിൽ രണ്ടു സംഗതികൾ പ്രത്യേകമായി ശ്രദ്ധിക്കേണ്ടതായിട്ടുണ്ടു്; ഒന്ന് പാണ്ഡിത്യം, മറെറാന്ന് പരിചയം. ഇതു രണ്ടുംകൂടി ഉണ്ടായാൽ മാത്രമേ ചികിത്സ ശരിയായിരിക്കൂ. ദീർഘകാലപരിചയംകൂടിയുള്ള പരീക്ഷാവിജയികൾ നന്നേ കുറവാകകൊണ്ടു ആര്യവൈദ്യക്രമമനുസരിച്ചും ഹോമിയോപ്പതി വൈദ്യക്രമമനുസരിച്ചും ചികിത്സ ചെയ്യുന്നവരെ നിയന്ത്രിക്കുന്നതു ജനസാമാന്യത്തിന് ദോഷമാണ്. ഇന്ന് ഈ വൈദ്യക്രമങ്ങളിൽ പരീക്ഷാവിജയികൾ കുറെ ഉണ്ടെങ്കിലും അവക്കു ദീർഘകാലത്തെ ചികിത്സാപരിചയം ഇല്ല. മാത്രമല്ലാ ഈ വൈദ്യക്രമങ്ങളനുസരിച്ചു പരീക്ഷയില്ലാത്തവർ ചികിത്സിച്ചാലും അലോപ്പതിപോലെയുള്ള ദോഷങ്ങളൊന്നും വരാനുമില്ല. ഇൻഡ്യയിലെ തത്വശാസ്ത്രവും വൈദ്യശാസ്ത്രവും വളരെ വിപുലങ്ങളാണ്. ഇവയെ അനവധി ശാഖകളുള്ള ഓരോ മഹാവൃക്ഷങ്ങളോടുപമിക്കാം. എന്നാൽ ഈ ശാഖകൾ ഒന്നിനു ഒന്നു വളരെ വ്യത്യാസമുള്ളവയാണ്. ഒന്നിന്റെ സ്വഭാവത്തെ കണ്ടുകൊണ്ടു മറെറാന്നിന്റെ സ്വഭാവത്തെ നിർണ്ണയിക്കുന്നതു് അബദ്ധമായിരിക്കും. എന്നാൽ മൂലത്തിൽ ഇവയ്ക്കു തമ്മിൽ സംബന്ധമുണ്ടുതാനും. ആര്യവൈദ്യക്രമത്തെപ്പററി പറയുമ്പോൾ അതു ഇൻഡ്യയുടെ പലഭാഗത്തും പല രൂപത്തിലാണു നടപ്പിലിരിക്കുന്നതു്. ആര്യർഷിമാരുടെ നിർദ്ദേശങ്ങൾ അനുസരിച്ചുള്ളവയാണെങ്കിലും വ്യത്യാസപ്പെട്ട ഔഷധങ്ങളാണ് ഓരോ ഭാഗത്തും ഉപയോഗിക്കുന്നതു്. എന്നാൽ എല്ലാം ആര്യവൈദ്യത്തിലെ വിധിയനുസരിച്ചുള്ളവയാണുതാനും. "ബ്രഹ്മാ സ്മൃത്വായുഷോ വേദം പ്രജാപതിമജിഗ്രഹൻ സശ്വിനൌ തൌ സ

[Mr. Thariathu Kujitommen]

ഹസ്രാക്ഷം സാത്രിപുത്രാദികാൻ മുനിം തേഗ്നിവേശാദികസ്തേ തു പൃഥക് തന്ത്രാണി തേനിരേ തേഭ്യോപി വിപ്രകീർണ്ണേഭ്യഃ പ്രായഃ സാരതരോച്ചയം ക്രിയതേഷ്ടാംഗഹൃദയം നാപി സംക്ഷേപ വിസ്തരം" എന്നാണ് അഷ്ടാംഗഹൃദയത്തിന്റെ കർത്താവായ വാഗ്ഭടാചാര്യർ പറയുന്നത്. ബ്രഹ്മാവിൽനിന്നു ഓരോ മഹർഷിമാർ അനുക്രമമായി ഗ്രഹിക്കയും അവർ എല്ലാം വളരെ വിസ്താരമായ ഗ്രന്ഥങ്ങൾ നിർമ്മിക്കയും ചെയ്തിട്ടുള്ളതിൽ നിന്നു മിക്കവാറും സാരങ്ങളായവയെ അധികവിസ്താരമോ ചുരുക്കമോ അല്ലാതെ ചേർത്ത് അഷ്ടാംഗഹൃദയം നിർമ്മിക്കുന്നു എന്നാണ് മേലുദ്ധരിച്ച ശ്ലോകത്തിന്റെ സാരച്ചുരുക്കം. വൃക്ഷലതാദികളെക്കൊണ്ട് പരിപുഷ്ടമായ കേരളത്തിൽ അധികവും മൂലങ്ങളെയും സസ്യങ്ങളെയും കൊണ്ടുള്ള എണ്ണ, കഷായങ്ങൾ മുതലായവയാണ് ആയുർവൈദ്യക്രമപ്രകാരം രോഗികൾക്ക് വിധിക്കുന്നത്. ഇവയിൽ ധാതുദ്രവ്യങ്ങൾ വളരെ കുറവാണ്. എന്നാൽ വൃക്ഷലതാദികൾ കുറവുള്ള തമിഴ്‌രാജ്യങ്ങളിലും മറ്റും ധാതുദ്രവ്യങ്ങൾകൊണ്ടുള്ള സിന്ദൂരങ്ങൾ മുതലായ ഔഷധങ്ങളാണ് അധികവും കൊടുക്കുന്നത്. അവിടങ്ങളിൽ നിയന്ത്രണത്തിന്റെ ആവശ്യമുണ്ട്. എന്തെന്നാൽ ശരിയായ പഠിപ്പും പരിചയവുമില്ലാതെ ലോഹദ്രവ്യങ്ങൾ പാകംചെയ്തു ഉപയോഗിച്ചാൽ പല ദോഷങ്ങളുമുണ്ടാകും. അപ്രകാരമുള്ള ദോഷത്തിനൊന്നിനും ഇവിടത്തെ ചികിത്സാക്രമത്തിൽ ഇടയില്ല. 'ബലാഗുളൂച്യാദി' എണ്ണയ്ക്കുപകരം 'ബലാശ്വഗന്ധാദി' മാറി ഒന്നു തേച്ചുപോയാലും വലിയ അപകടം ഒന്നും വരാനില്ല. കഷായത്തിന്റെ കാര്യത്തിലും അങ്ങിനെതന്നെ. വാഗ്ഭടൻ, ശാർങ്ഗധരൻ മുതലായവരുടെ യോഗങ്ങളാണ് കേരളത്തിൽ അധിക ഉപയോഗം. തമിഴ്‌നാട്ടിൽ അഗസ്ത്യരുടേയും. ഇങ്ങനെ ഇൻഡ്യയുടെ മറ്റു ഭാഗങ്ങളിലും ഔഷധങ്ങളുടെ ഉപയോഗത്തിൽ വ്യത്യാസമുണ്ട്. എന്നാൽ എല്ലാം ആയുർവേദക്രമംതന്നെ. ഇവ ആയുർവേദമഹാമരത്തിന്റെ ശാഖകൾതന്നെ. മൂലം ഒന്നാണ്. ദേശഭേദമനുസരിച്ചു ഔഷധങ്ങൾ ഉപയോക്കുന്നെന്നേ ഉള്ളൂ. അതുകൊണ്ടു ധാതുദ്രവ്യങ്ങൾ അധികം ഉപയോഗിക്കുന്ന ഇൻഡ്യയുടെ മറ്റു ഭാഗങ്ങളിലെപ്പോലെ ഫലമൂലാദികളെകൊണ്ടു കഷായങ്ങളും, എണ്ണകളും, ലേഹ്യങ്ങളും മറ്റും ഉണ്ടാക്കി ഉപയോഗിക്കുന്ന ഇവിടത്തെ നാട്ടുവൈദ്യന്മാരെ ഇപ്പോൾ നിയമത്താൽ നിയന്ത്രിക്കേണ്ട ആവശ്യമില്ല.

MR. PADIYARA JOSEPH KUNJU: 'വിലപാഷി' ഗുളികയ്ക്കുപകരം 'രാമബാണ' ഗുളികകൊടുത്താൽ ദോഷം വരികയില്ലേ?

MR. THARIATHU KUNJITOMMEN : അങ്ങിനെ കൊടുക്കുകയില്ല. 'രാമബാണം' ഗുളികയിൽ സ്വല്പം ധാതുദ്രവ്യം ഉണ്ട്. 'വില്വാദി' ഗുളികയിൽ അതില്ല. രാമബാണം ജ്വരത്തിനും, വില്വാദി ദീപനക്ഷയത്തിനുമാണ് കൊടുക്കുന്നതു്. അതുകൊണ്ടു് ദീപനത്തിനു മരുന്നുകൊടുക്കേണ്ടിവരുമ്പോൾ അതിലേക്കു വിധിച്ചിട്ടുള്ള ഔഷധങ്ങളിൽ ഏതാണു കൊടുക്കേണ്ടതെന്നു ചിന്തിച്ചു ചെയ്യുമെന്നല്ലാതെ അതിലേക്കു ജ്വരത്തിനുള്ള മരുന്നുകൊടുക്കുകയില്ല.

നാട്ടിൻപുറങ്ങളിൽ നാട്ടുവൈദ്യന്മാരെക്കൊണ്ടും ഹോമിയോ വൈദ്യന്മാരെക്കൊണ്ടുമാണ് അലോപ്പതിവൈദ്യന്മാരെക്കാൾ കൂടുതൽ ഗുണം. പരീക്ഷയുള്ള അലോപ്പതി ഡാക്ടർമാർക്കു കൂടുതൽ സംഖ്യ കൊടുക്കണം. സാധുക്കളായ കൃഷീവലന്മാർക്കു അതു പ്രയാസമാണ്. സാധുക്കൾ വല്ല നാട്ടുവൈദ്യന്മാരുടേയും അടുക്കൽ പോകും; അവർ വല്ല കഷായത്തിനും കുറിച്ചുകൊടുക്കും, അതുകൊണ്ടു അവക്ക് ഗുണവും കിട്ടും. ആയുർവൈദ്യന്മാരെ നിയന്ത്രിച്ചാൽ നാട്ടിൻപുറങ്ങളിലെ സാധുക്കളുടെ കാര്യം കഷ്ടത്തിലാകും. ജനങ്ങളുടെ ഇടയിൽ പരക്കെ സമ്മതമുള്ളവരും കുടുംബപാരമ്പര്യമായി ചികിത്സ നടത്തിക്കൊണ്ടിരിക്കുന്നവരുമായ അഷ്ടവൈദ്യന്മാർക്കു സർട്ടിഫിക്കെറ്റോ ഡിഗ്രിയോ ഒന്നുമില്ല.

MR. PADIYARA JOSEPH KUNJU : അതുപോലെതന്നെ വൈദഗ്ദ്ധ്യമുള്ളവർ അലോപ്പതി വൈദ്യന്മാരുടെ കൂട്ടത്തിലുമില്ലേ?

MR. THARIATHU KUNJITHOMMEN : ഇല്ലെന്നുവേണം വിചാരിക്കാൻ. അലോപ്പതി ഇടക്കാലത്തു വന്നതാണ്; അതിൽ വൈദഗ്ദ്ധ്യം നിശ്ചയിക്കുന്നതു പരീക്ഷാ വിജയംകൊണ്ടാണ്. ഇന്ന് ആയുർവൈദ്യത്തിൽ ഏർപ്പെടുത്തിയിട്ടുള്ള പരീക്ഷകൾക്കു ചോദ്യക്കടലാസുകൾ തയ്യാറാക്കുന്ന വൈദ്യന്മാർപോലും ഒരു പരീക്ഷയും പാസായിട്ടില്ല. എന്നാൽ അവരെക്കൊണ്ടു് ജനങ്ങൾക്ക് വലിയ സഹായമുണ്ട്. അതുകൊണ്ടു് പരീക്ഷാവിജയവും പഴക്കവും സിദ്ധിച്ചിട്ടുള്ള ആയുർവൈദ്യന്മാർ നാട്ടിന്റെ ഓരോ ഭാഗത്തും ധാരാളം ഉണ്ടാകുന്നകാലത്തല്ലാതെ അവരെ നിയമത്താൽ നിയന്ത്രിക്കുന്നതു ജനസാമാന്യത്തിന്റെ ഗുണത്തിനു പറ്റിയതായിരിക്കയില്ല.

ഹോമിയോപ്പതി ചികിത്സാക്രമംകൊണ്ടു് ജനങ്ങൾക്കു വലിയ ഉപദ്രവമൊന്നും വരാനില്ല. ഹോമിയോ ഔഷധങ്ങളിൽ ധാതുദ്രവ്യങ്ങളുണ്ട്. എന്നാൽ ഔഷധങ്ങൾ തയാറാക്കുന്നതു് ഒരുതുള്ളി ധാതുദ്രവ്യ

[Thariathu Kunjithommen.]

ത്തിൽ ൻൻ തുള്ളി പാലിൽനിന്നും എടുക്കുന്ന പഞ്ചസാര അല്ലെങ്കിൽ വീഞ്ഞിന്റെ സത്തു ചേർത്താണ്. ഇങ്ങനെ ഇയ്യ് മുപ്പതും അൻപതും പ്രാവശ്യം ആവർത്തിക്കുമ്പോൾ ആ മരുന്നിന് മൂലദ്രവ്യത്തിന്റെ ഗന്ധമൊ, നിറമോ, രുചിയോ ഒന്നുമില്ല. എന്നാൽ ഔഷധത്തിന്റെ നിലയിൽ വലിയ ഗുണമുണ്ടുതാനും. അങ്ങിനെയുള്ള വൈദ്യക്രമത്തെയും നിയന്ത്രിച്ചതുകൊണ്ട് ജനസാമാന്യത്തിനു ദോഷമല്ലാതെ ഗുണമൊന്നും ഉണ്ടാകുകയില്ല. "ബ്രയോണിയാ"ക്കു പകരം "നക്സ്വോമിക്കാ" കൊടുത്തതുകൊണ്ട് അപകടം പററിയതായി കേട്ടിട്ടില്ല. ഞാൻ ദീർഘകാലം ഹോമിയോ ഔഷധങ്ങൾ സേവിച്ചിട്ടുണ്ട്. എന്റെ കുടുംബത്തിലുള്ളവരും ഉപയോഗിച്ചിട്ടുണ്ട്. ഈ ചികിത്സാരീതിയെക്കുറിച്ചുള്ള പുസ്തകങ്ങൾ ഞാൻ വായിച്ചിട്ടുണ്ട്. ഈ ചികിത്സാക്രമത്തിൽ പരീക്ഷാവിജയികളല്ലാത്തവർ ചികിത്സിച്ചാലും വലിയ അപകടങ്ങളില്ലെന്നാണ് ഞാൻ ധരിച്ചിരിക്കുന്നത്. ജനങ്ങളുടെ പരക്കെയുള്ള വിശ്വാസവുമതുതന്നെ.

MR. PADIYARA JOSEPH KUNJU: ആയുർവേദത്തിൽ പരീക്ഷാവിജയികളായ ആളുകൾ ധാരാളമില്ലെന്നാണോ മെംബർ പറയുന്നത്?

MR. THARIATHU KUNJITHOMMEN: ഞാൻ ഹോമിയോപ്പതിയെപ്പററി പറഞ്ഞുകൊണ്ടിരിക്കയാണ്. ആയുർവേദത്തിലും ഹോമിയോപ്പതിയിലും പരീക്ഷാവിജയികൾ വളരെക്കുറവാണ്. ഉള്ളവർക്ക് പഴക്കവും പോരാ.

MR. C. V CHANDRASEKHARAN: Will the Hon. Member be pleased to enlighten the House about the composition of Ramabhanom.

PRESIDENT: Ramabhanom has spread very far.

MR. THARIATHU KUNJITHOMMEN: മെംബർ ചോദ്യം മലയാളത്തിലല്ലെങ്കിൽ തമിഴിൽ ചോദിച്ചാൽ എനിക്കു മനസ്സിലാകും.

ആയുർവൈദ്യക്രമത്തിലും ഹോമിയോപ്പതി വൈദ്യക്രമത്തിലും പരീക്ഷാവിജയികളുടെ സംഖ്യ ഇപ്പോൾ വളരെ കുറവാണ്. താലൂക്കുതോറും ഒരാളിനെ കിട്ടാൻ വിഷമമാണ്. ഓരോ പകുതിയിലും ഈ ക്രമങ്ങളിൽ പരീക്ഷാവിജയികളായ ഓരോ ആളിനെ കിട്ടുന്നകാലംവരെ പരീക്ഷയുള്ളവരേ ചികിത്സിക്കാവൂ എന്നു നിയന്ത്രിച്ചാൽ ജനസാമാന്യത്തിനു സങ്കടത്തിനാണ് ഇടയുള്ളതു്. ഇപ്പോൾ തന്നെ അവരെ നിയമംകൊണ്ടു ബന്ധിച്ചാൽ ഈ ചികിത്സാക്രമങ്ങൾ മേലിൽ വികസിക്കാതെ വരും. അലോപ്പതിയെ സംബന്ധിച്ച് പരീക്ഷാവിജയികളല്ലാത്തവർ ചികിത്സിക്കാൻ പാടില്ലാ എന്നു പറയേണ്ടകാലമായിക്കഴിഞ്ഞു. ആ

തിൽ നല്ല ജ്ഞാനമനമില്ലാത്തവർ ഔഷധം കൊടുത്താൽ ദോഷത്തിനിടവരാം. ഇപ്പോഴത്തെ ബില്ല് നല്ലപോലെ ആലോചിച്ചാണ് സെലക്ററ് കമ്മിററി പാസ്സാക്കിയത്. അതിൽ ഞാനും ഉണ്ടായിരുന്നു. മററു വൈദ്യക്രമങ്ങളെ ഉൾപ്പെടുത്തുന്നതിനായി ഈ ബില്ല് മാററിവയ്ക്കേണ്ട ആവശ്യമില്ലെന്നാണ് എന്റെ വിനീതമായ അഭിപ്രായം.

MR. D. FRANCIS (*Kalkulam* cum-*Vilavancode*): ஸர், இந்த மெடிக்கல் ரிஜிஸ்ட்ரேஷன் பில்லை ஒத்திவைக்கவேண்டுமென்ற பிரப்போஸலை நான் அனுகூலிக்கிறேன். இது ஒரு பெரிய விஷயமாகயிருக்கிறது. நாட்டு சிகிச்சையை ஜனங்கள் தாராளமாய் விரும்புகிறார்கள். நாட்டு வைத்தியர்கள் அவ்வளவாக அதிகம்பேர் இல்லை. நாட்டு சிகிச்சையில் எல்லா ஏழை ஜனங்களும் அதிகசிலவு யில்லாமல் நல்ல மருந்துகளைப் பெற்றுக் கொள்கிறார்கள். நாட்டு சிகிச்சையை நிறுத்திவிட்டால் இங்கிலீஷ் சிகிச்சைக்கு ரொம்ப சிலவு ஆகிவிடும்.

வேறு ஒரு சங்கதி என்னவென்றால், நாட்டுவைத்தியர்களிடத்தில் எண்ணை சிகிச்சை தாராளமாய் இருக்கிறது. வாதம் முதலான பல தீனங்களும் அதிகப்பணச்சிலவு இல்லாமல் பல எண்ணைகளால் சுலபமாய் சுகப்படுத்தி விடுகிறார்கள். இந்த சிகிச்சை பெரிய பட்டம் பெற்ற இங்கிலீஷ் வைத்தியர்களிடத்தில் கிடைக்கிறதில்லை. தவிரவும் வர்மாணி என்று வேறொரு விசேஷ சிகிச்சை அவர்களிடத்தில் இருக்கிறது. ஒருவன் அடியினாலோ அல்லது மரத்திலிருந்து விழுந்ததினாலோ வர்மம் ஏற்றுக் கொண்டால் இந்த நாட்டுசிகிச்சை செய்யப்பட்ட பெரிய வர்மவைத்தியர்களிடம் கொண்டு போகிறார்கள். அவன் நிமிஷப் பொழுதில் தேகத்தில் தட்டியும், தடவியும், சுகப்படுத்தி நடக்கப் பண்ணுகிறான். இந்தமாதிரி சிகிச்சை பெரியடாக்டர்களிடத்தில் காணப்படுகிறதில்லை. அவர்களுக்கு இந்த சம்பிரதாயம் தெரியவும் செய்யாது. தவிரவும் ஒருவனை நல்லபாம்பு கடிக்கும்போது, அவனை விஷவைத்தியர்களிடத்தில் தூக்கிக் கொண்டு போகிறார்கள். விஷவைத்தியன் அதை சில மணிக்கூறுகளுக்கு அகம் சுகப்படுத்திவிடுகிறான். இந்த மாதிரி விஷம் இறக்குகிற சாமர்த்தியம் பட்டம்பெற்ற டாக்டர்களுக்குத் தெரியவே செய்யாது. மேலும், அவர்களுக்கு படிக்கவும் முடியாது. இப்படிப்பட்ட திறமைவாய்ந்த நாட்டு வைத்தியர்களை இந்தப் பிர்படி இல்லாமல் ஆக்கிவிட்டால், பாம்புகடித்தவர்களை யாரிடத்தில் கொண்டுபோய் சுகப்படுத்தலாம், பலவிதமான வியாதிகளை சுகப்படுத்துகிற பலவிதமான எண்ணைகள் பெரியடாக்டர்களிடம் கிடைக்குமா? ஒருவன் விழுந்துசாகப்போகிறதாயிருந்தால், அவனை தூக்கிக்கொண்டு எங்கேபோகலாம்? இங்கிலீஷ் வைத்தியர்களுக்கு இந்த சிகிச்சையில் ஞானமுண்டா? அதனால், இங்கிலீஷ் வைத்தியம் எப்படி ஆவசியமோ அதுபோலவே நாட்டுவைத்தியமும் ஆவசியமாயிருக்கிறது. அதனால் இந்த விஷயத்தை இன்றைக்கு முடித்துவிடாமல், ஒத்திவைத்து, இன்னொரு பில்கூட எல்லோருடைய சங்கதியும் அதில் வரும்படியாக, கொண்டுவரவேண்டுமென்றும், தற்போதுள்ள ஒத்திவைக்கவேண்டுமென்ற பிரப்போஸலை நான் அனுகூலிக்கிறேன்.

MR. M. SIVATHANU PILLAI (*Tovala* cum *Agastisvaram*): In speaking a few words in respect of the motion I wish to say, Sir, that the objection to hold up the Bill for the time being in order that the House may be enabled to take into consideration the question of controlling quacks practising different systems, that may also have to be incorporated in the Bill, appears to be based on two or three grounds. One is that the allopathic system of practice alone is perfectly organised so that it is long overdue that the House do take into serious consideration that malpractice is not permitted in that system. The second ground of objection appears to be that it is very urgent that the Bill can ill-afford to be held up. Thirdly, from one of the honourable members who opposed the motion, the reason appears to be that the Allopathic system has got ever so many duly qualified medical practitioners in this country, so much so that persons who are not duly qualified may not be permitted to practise. That is to find out a way for earning for the products of the Medical University. These are the three main grounds of the objectors of the motion.

Let me analyse the first ground that the allopathic system is perfectly organised. I will concede for one moment that this system of practice has been well organised. But I for one fail to understand why the same idea could not be extended to the other systems of practice, for example, the Ayurvedic system, the Unani system, and the Homeopathy. But unfortunately, Sir, one system happened to be deliberately or intentionally omitted from being mentioned in this House, namely, the Tamil system, what we call *Siddha Vaidyam*.

It is really unfortunate that no other member of this House has referred to it. It is because that it is not equally in Vogue or is it that it is not worth mentioning.

MR. G. RAMAN PILLAI: Is it the opinion of the honourable member that the treatment acccording to the Siddha Vaidya system can favourably compare with that of allopathic and if so, to what extent?

MR. M. SIVATHNU PILLAI: I am speaking on the point whether the allopathic system is well organised or not. I do concede that that system is sufficiently well organised. There can be no dispute about it. One honourable member referred to the position of tho Siddha Vaidya treatment obtaining in Bombay and that system also is included in this scope of the Bombay Act. But during some occasions one finds no benefit in the allopathic system. Much relief is gained by the Siddha Vaydya system also. If there are instances to show that relief could be obtained by means of non-allopathic systems. I mean under the Siddha Vydia system, are we not in duty bound to present all quack in that system also, So it becomes highly necessary to bring this system of practice also under the operation of the Bill in question. In a question of this kind, the House ought not to be carried away by the consideration whether a system is well organised or not or whether there are enough practitioners who can find out their living in the midst of over-crowding. Nor should the House consider whether a particular system of treatment is superior or inferior to other system of

treatment. The only point for consideration is whether this Bill ought not to aim chiefly and mostly at the stopping of malpractices in respect of treatment under allopathic or other systems. In other words, we have to see whether there is scope for protecting human lifes from aviodable deaths as a result of quacks treating cases of ilnes. It should not be our aim to see whether the allopathic system of treatment is superior or whether some other system is superior. But we should know by what method a particular system of treatment could be kept under proper control so as to free it from malpractices, when all systems of practice are generally found in the country. In my part of the country the Siddha Vaidya system is also generally practised. There are very capable practitoners as well as quacks. There are instances in which a barber following his profession of shaving and hair-dressing till just the previous evening, becomes the next morning a medical practitioner. I know in several cases, these quacks do not even hesitate to attend in labour cases only to pack off post haste the mother and the baby together to heavens. I ask, Sir whether this House should not consider their cases seriously and provide against such a recurrence. Under such circumstances I ask seriously whether this House should not consider the necessity to control the practitioners who follow the different systems of treatment. There are also, as a matter of course practitioners in this country practising the Siddha Vaidya system, the Unani, the Homeopathic, the Ayurveda etc., Under all these systems, medical treatment could be effected. The endeavour should be to stop all quacks from all systems of treatment by which highly successful results could be achieved. That involves further scrutiny of this Bill. Then what harm will ensue in case this Bill is held up. In the good interests of the humanity at large, it is better that some consideration is further bestowed on the Bill in question. All protection should be afforded in the matter of medical treatment which deals with human affairs.

Thirdly, the mere fact that qualified medical men in Allopathy are available in plenty, should not lead us to support the view that the system requires safe-guarding. Because human lives are involved, the practitioners of the different systems should be brought under the control of the provisions of the Bill. With these words, I support the motion for postponement of the Bill.

MR. P. S. MUHAMED (*Quilon cum, Kottarakara*) : സർ, അഡ്ജോൻചെയ്യണമെന്നുള്ള മോഷനെ ഞാൻ അനുകൂലിക്കുന്നു. മി: കുഞ്ഞിത്തൊമ്മൻ അദ്ദേഹത്തിൻെറ പ്രസംഗത്തിൽ ഭൂരിപക്ഷത്തിൻെറ ഗുണത്തെ ആശ്രയിച്ചാണ് ഒരു നിയമം നിർമ്മിക്കണ്ടതെന്നും, അതുകൊണ്ടു ഈ ബില്ല് ഇപ്പോൾതന്നെ പാസാക്കണമെന്നും സൂചിപ്പിച്ചു. ഭൂരിപക്ഷത്തിൻെറ ഗുണത്തെ ഉദ്ദേശിച്ചാണ് ഒരു നിയമം ഉണ്ടാക്കേണ്ടതെങ്കിൽ ഭൂരിപക്ഷത്തിനു പ്രയോജനപ്പെടത്തക്കവിധത്തിൽ ഒരു നിയമം നിർമ്മി

[Mr. P. S. Muhamed.]

കത്തക്കനിലയിൽ ഈ ബില്ലിനെ ഭേദപ്പെടുത്താൻ സാധിക്കുമോ എന്നു നോക്കേണ്ടതാണ്. ഈ രാജ്യത്തു് ൯൦ ശതമാനം ആളുകളും ആര്യവൈദ്യസമ്പ്രദായപ്രകാരമുള്ള ചികിത്സയിലിരിക്കുന്നവരാണ്. കുറേപ്പേർ ഹോമിയോപ്പതി ചികിത്സ നടത്തുന്നുണ്ട്. കുറേപ്പേർ ചിന്താമണിചികിത്സയും നടത്തുന്നുണ്ട്. പൊതുവേ നോക്കിയാൽ ഇംഗ്ലീഷ് ചികിത്സാസമ്പ്രദായത്തെക്കാൾ വളരെ പ്രചാരത്തിലിരിക്കുന്നതു നാട്ടുചികിത്സാസമ്പ്രദായമാണ്. ജനങ്ങൾക്കു കൂടുതൽ വിശ്വാസവും പ്രയോജനവും ആയുർവേദചികിത്സയിലാണെന്നും മനസ്സിലാക്കിയിട്ടാണ് ഗവണ്മെന്റ് ആയുർവേദചികിത്സാസമ്പ്രദായത്തെ പ്രോത്സാഹിപ്പിച്ചു് തുടങ്ങിയതു്. ഇന്നുതന്നെ ഒരു ആയുർവേദകാളേജു സ്ഥാപിക്കാനുള്ള കെട്ടിടത്തിനായി ഗ്രാന്റു ഗവണ്മെന്റു കൊണ്ടുവരികയും ഈ സഭ അതനുവദിക്കയും ചെയ്തു. ഇങ്ങനെ നാട്ടുചികിത്സാസമ്പ്രദായത്തെ നന്നാക്കിക്കൊണ്ടു വരണമെന്നു ഗവണ്മെന്റും ജനങ്ങളും ഒന്നുപോലെ ആഗ്രഹിച്ചുകൊണ്ടിരിക്കുന്നു. ഈ ബില്ലു ഇതുപോലെ പാസ്സാക്കിയാൽ ചികിത്സ എന്നു പറയുമ്പോൾ അലോപ്പതി ചികിത്സയാണ് എന്നു അർത്ഥം വന്നുകൂടും. ഈ ബില്ലിന്റെ ഹെഡിംഗ് ഇംഗ്ലീഷ് ചികിത്സ എന്നു അർത്ഥം വരത്തക്കനിലയിൽ മാററി ഇതു പാസാക്കുകയും മററുള്ള വൈദ്യരീതികളെ സംബന്ധിച്ചു് മറെറാരു ബിൽ അവതരിപ്പിച്ചു് പാസാക്കുകയും ചെയ്താൽ മതി എന്നു് ഒരു അഭിപ്രായം ഇവിടെ കേട്ടു. ഈ ബിൽ ഇവിടെ കൊണ്ടുവന്ന സമയത്തു് എല്ലാ വൈദ്യസമ്പ്രദായങ്ങളെയും ബന്ധിക്കത്തക്കനിലയിൽ ഇതു് രൂപീകരിക്കണമെന്നും ഈ സഭ അഭിപ്രായപ്പെട്ടു്, സെലക്ടുകമ്മിററി വേണ്ട ആലോചന നടത്തിക്കൊള്ളണമെന്ന നിർദ്ദേശത്തോടുകൂടി ബിൽ സെലക്ടു കമ്മിററിക്കയച്ചു. അതിനെപ്പററി യാതൊന്നും ചിന്തിക്കാതെ യാതൊരഭിപ്രായവും പറയാതെ ഇംഗ്ലീഷ് സമ്പ്രദായത്തെമാത്രം ബാധിക്കുന്നതരത്തിൽ ഒരു ബില്ലു കൊണ്ടുവന്നതു് ഒരിക്കലും ക്ഷന്തവ്യമല്ല. മററുള്ള വൈദ്യക്രമത്തെപ്പററി സെലക്ട്കമ്മിററിറിപ്പോർട്ടിൽ യാതൊന്നും പറഞ്ഞുകാണുന്നില്ല. സെലക്ടുകമ്മിററിയിൽ ആരെങ്കിലും ഇതിനെപ്പററി ഒരു അഭിപ്രായം പറയുകയും അതു് സെലക്ടുകമ്മിററി ആലോചിക്കത്തക്കതല്ല എന്നു പറയുകയും ചെയ്തിരുന്നാൽ അതു നമുക്ക് മനസ്സിലാക്കാമായിരുന്നു. ഈ ഹൗസിന്റെ അഭിപ്രായത്തെ അവഗണിച്ചാണു സെലക്ടുകമ്മിററി ഈ ബില്ലു് ഇവിടെ കൊണ്ടുവന്നിട്ടുള്ളതു്. അതു

കൊണ്ടുതന്നെ ഈ ബില്ല് ഇപ്പോൾ പാസാക്കാൻ പാടില്ല. ഏതൊരു സംഗതിയും, അതിൻെറ നാനാവശങ്ങളെയും ശരിയായി പരിഗണിച്ചുവേണം പ്രവർത്തിക്കാൻ. ഈ ബിൽ അവതരിപ്പിച്ച സമയത്തു ഈ ഹൗസിനുണ്ടായിരുന്ന അഭിപ്രായങ്ങൾ പറഞ്ഞു കഴിഞ്ഞു. അതിനെക്കുറിച്ചുകൂടി ആലോചിച്ച് മററു വൈദ്യക്രമങ്ങളെക്കൂടി ഇതിൻെറ പരിധിയിൽ ഉൾപ്പെടുത്താൻ സാധിക്കുമോ അങ്ങിനെ ഉൾപ്പെടുത്തുകയാണെങ്കിൽ മി. കുഞ്ഞിത്തൊമ്മൻ പറഞ്ഞപ്രകാരം ഭൂരിപക്ഷത്തിനു ഗുണപ്രദമായ ഒരു നിയമം ഉണ്ടാക്കാൻ സാധിക്കുമോ എന്നെല്ലാം ആലോചിച്ചു തീർച്ചപ്പെടുത്തുന്നതുവരെ ഇതിൻെറ പര്യാലോചന മാററിവെയ്ക്കേണ്ടതു് അത്യന്താപേക്ഷിതമാണ്. ഈ ബിൽ അവതരിപ്പിച്ച അവസരത്തിൽ തന്നെ ഇംഗ്ലീഷ് ഡാക്ടർമാരിൽ പലരും അവരുടെ സങ്കടങ്ങളെ കാണിച്ച് പല അപേക്ഷകളും ഈ ഹൗസിൻെറ ശ്രദ്ധയിൽ കൊണ്ടുവരികയും, പല മെംബർമാരും അതിനെ സംബന്ധിച്ച് അഭിപ്രായം പുറപ്പെടുവിക്കയും ചെയ്തിട്ടുണ്ട്. ഈ സംഗതികളെ അശേഷം അവഗണിച്ചാണ് സെലക്ട്കമ്മിററി ഷെഡ്യൂൾ തയ്യാറാക്കിയതു്. ഷെഡ്യൂളിൽ തന്നെ രണ്ടോ മൂന്നോ സർട്ടിഫിക്കററുകൾ മാത്രം ചേർക്കുകയും ശേഷമുള്ളവ സ്വീകാരയോഗ്യങ്ങളല്ലെന്നു പറഞ്ഞു തള്ളുകയുംചെയ്തു. സ്വീകാരയോഗ്യങ്ങളല്ലെന്നു തള്ളിയവയെ സ്വീകരിക്കാമോ എന്നുള്ളതിനെപ്പററി ഒരാലോചനപോലും അവർ ചെയ്തില്ല. ഇങ്ങനെ നോക്കുകയാണെങ്കിൽ മററു ചികിത്സാരീതി നടത്തിക്കൊണ്ടിരിക്കുന്നവരുടെ സങ്കടം മാത്രമല്ല ഇംഗ്ലീഷ് ചികിത്സ നടത്തിക്കൊണ്ടിരിക്കുന്നവരുടെയിടയിൽ തന്നെ പലവിധത്തിലുള്ള സങ്കടങ്ങൾക്കും കാരണമായ ഒരു ബില്ലാണിതെന്നു കാണാം. ഇതിനെപ്പററിയെല്ലാം ആലോചിച്ച് ഈ ബില്ല് എത്രത്തോളം പ്രയോജനപ്രദമാക്കാൻ കഴിയുമോ അത്രത്തോളം പ്രയോജനകരമാക്കത്തക്കനിലയിൽ രൂപീകരിക്കുന്നതിനു കുറെ സമയം വേണമെന്നു ആവശ്യപ്പെടുന്നതു കേവലം ന്യായമാണ്. ഇതിനെ ഈ ഹൌസ് സമ്മതിക്കുമെന്നാണ് എൻെറ വിശ്വാസം.

MR. S. KRISHNA IYER (*Nominated*): The only matter before the House seems to be whether we want the recognition of allopathic practice. The Bill is intended for protection against allopathic quacks. It is said that there are quacks in every branch of the medical profession. Is that a reason why or we should not have a legislation to prevent the danger of one set of quacks dealing with the life of people.

[Mr. S. Krishna Iyer.]

I believe on further thought it will be the general opinion of the House that it is impracticable to govern all the different systems of medical practices obtaining in Travancore. The standards are different. We cannot regulate Homeopathic system, we cannot regulate the practice of Unani, we cannot regulate the practice of Chintamani. The main question therefore——

MR. PADIYARA JOSEPH KUNJU: ആയുർവേദം പ്രാക്ടീസു ചെയ്യുന്നവരെ എന്തുകൊണ്ടാണ് റെഗുലേറ്റു ചെയ്യാൻ പാടില്ലാത്തതു് എന്നു പറയുവാൻ ദയവുണ്ടാകുമോ?

MR. S. KRISHNA IYER: I said that to a certain extent it may be possible to regulate the Ayurvedic system of practice. But that is only to a very limited extent. As regards other systems it is practically impossible to regulate practice amongst them. Under these circumstances, the only question is, do we want the regulation of the practice of allopathy or do we not. That is the only question before the House. If this Bill is held up, that means that we shall not be able to control any set of quacks.

MR. THARIATHU KUNJITHOMMEN: ആയുർവേദ വൈദ്യക്രമത്തിൽ പരീക്ഷാവിജയികളായവരുടെ സംഖ്യ നമ്മുടെ രാജ്യത്തു വളരെ കുറവല്ലേ?

MR. S. KRISHNA IYER: ഇതിലേയ്ക്കു് ഒരു താരതമ്യേന വേണം സമാധാനം പറയുവാൻ. മററു രാജ്യങ്ങളെ അപേക്ഷിച്ചു് തിരുവിതാംകൂറിൽ ആയുർവേദ പരീക്ഷാവിജയികൾ കൂടുതലാണെന്നാണ് എന്റെ അറിവു്.

MR. THARIATHU KUNJITHOMMEN: പരീക്ഷാവിജയികളായ ആയുർവേദ വൈദ്യന്മാർ കുറവാണെന്നാണു ഞാൻ പറഞ്ഞതു്.

MR. N NARAYANA KURUP (*Ambalapuzha* cum *Shertalla*): The object of the Bill is very clear from the preamble. It says that the Government wants to check quack medical practitioners from using their little knowledge to the danger of the public. If that is the object of the Bill, I do not see any reason why the quacks of other systems should not be checked, that is those practising in Ayurvedic system, the Homeopathic system or the Chintamani system. If the Government, by this legislation, want to check the quacks in a particular system or of particular qualification, I mean the allopathic, I fail to see why the quacks in all the other systems of medicine should not be checked. They are exercising their little knowledge to the great danger of the citizens of Travancore. If this Bill is partial to the allopathic system then the quacks in other systems of medicine will continue their havoc. Further, it will appear that our Government do not recognise homeopathic and other systems

of medicine and the people will slowly be failing in their faith in other systems of treatment. The Legal Remembrancer has been telling the House, that the amendments to include other systems of medicine in this Bill cannot be allowed on the technical objection that the present Select Committee did not consider the question of including other systems of medical practitioners when this Bill was under consideration. If it is so it is our desire that this very same Bill should be recommitted to the Select Committee to consider whether other systems should also be included in the present Bill. The Legal Remembrancer, was saying that another Bill may probably be introduced to regulate the homeopathic, ayurvedic and other systems of medical practice. My submission is that it is a waste of time of this honourable House. We can include all those things even now when a medical Registration Bill is under consideration. It is not a novel thing to our country alone. The Indore State, the Baroda State and the United Provinces have all included all these systems of medicine in one medical Bill. Therefore my suggestion is that in order to include all the systems of medical practice in our country this bill must be postponed or the Legal Remembrancer may withdraw his technical objection in allowing our amendments to be discussed in the House.

MR. T. C. KESAVA PILLAI: May I know whether the member will be satisfied if the heading of the Bill is changed?

MR. N. NARAYANA KURUP: Even then we want another Medical Registration Bill for Ayurveda, Homeopathy and Sydhakalpa which means two or three Medical Registration Bills for our State. My friend Mr. Kunjithommen was remarking that Ayurvedic practitioners are very few in every taluk. My fear is that my friend is not opening his eyes wide enough to see the number of Ayurvedic physicians. In Alleppey itself, a part of Ambalapuzha taluk, my constituency, I can assure Mr. Kunjithommen that there are about 30 Ayurvedic Medical practitioners. Taking other parts of Ambalapuzha taluk, I can assure Mr. Kunjithommen that there are about 40 Ayurvedic practitioners in all the pakuthies taken together.

(Mr. Thariathu Kunjithommen stood up to speak)

PRESIDENT: The honourable member must not interrupt the other honourable member who is in possession of the House. It is open to the honourable member, as a matter of courtesy, to take his seat. But if he does not do so, the honourable member cannot persist in doing so.

MR. N. NARAYANA KURUP: The number of qualified medical practitioner is not the creterion. The Bill is not intended to protect the qualified allopathic medical practitioners. It will appear as though this Bill is intended for the protection of only allopathic medical practitioners. My idea is that it is intended to protect the poor citizens of Travancore from being killed by quacks, either allopathic or homeopathic or ayurvedic. Therefore what I wish to bring to the notice of the House is that there are quacks in all the systems of medical practice throughout Travancore and they are a menace to the public life. Hence it is

[Mr. N. Narayana Kurup.]

essential that the Bill should be so comprehensive and complete as to include the medical practitioners of all systems of medical treatment in our State. With these observations, I support the motion.

VAIDYASASTRAKUSALA DR. (MRS.) M. PONNEN LUKOSE: Sir I would like to know from the Legal Remembrancer whether the passing of the Medical Registration Bill will prevent practitioners of other systems of medicine practising their respective systems.

MR. PUTHUPALLY S. KRISHNA PILLAI: No, Sir. It purports only to deal with allopathy. It does not deal with any other system, so that any person may practise any system of medicine other than the allopathic system. As a matter of fact, it does not prevent anybody from practising that.

VAIDYASASTRAKUSALA DR. (MRS.) M. PONNEN LUKOSE: The honourable members who have opposed the passing of the Travancore Medical Registration Bill, I am afraid, have mistaken the object of the Bill. This Bill is intended to control persons practising the allopathic system of medicine. We have heard that there are quacks practising allopathic and other systems of medicine and it is to prevent the allopathic quacks doing harm to the public that we want this Bill to be passed. I think the quacks who practise allopathic system are more dangerous to the public than quacks who practise other systems. I know as a matter of fact, that there are men who have had no proper training in allopathic system treating patients with injections doing operations and thereby doing great ham to the public. All the honourable members who spoke have realised the necessity of protecting the public. It is for this very purpose that we want this Bill to be passed. Persons practising other systems of medicine are at liberty to practise those systems provided they do not trespass into allopathic treatment. Therefore I cannot see why there should be any objection to the taking up of this Bill for consideration now.

MR. KAINIKKARA M. PADMANABHA PILLAI: Sir, here neither the mover of the motion nor any of the members who supported the mover does deny the necessity for a Bill to check or to bring under control the allopathic medical system. But, at the same time we are not prepared to admit that the necessity is any way less in the case of the practitioners of other sections. Of course it might be true to say that in some respects allopathic system would when handled by quacks, be more dangerous than the ayurvedic or homeopathic systems. At the same time, if you remember, that the greater number, of patients really go to the ayurvedic and homeopathic Doctors, especially ayurvedic physicians, though the danger may not be so great in quality, but is greater in quantity the necessity for in-corporating them becomes obvious. The number of patients who have to suffer at the hands of the ayurvedic quacks are certainly much greater than the number of men who have to suffer at the hands of the allopathic quacks. Another factor is that because there are well established medical hospitals run on allopathic lines, it is very seldom that a patient will fall into the hands of an allopathic quack. On the

contrary, because there is no hospital where the ayurvedic and other systems are practised, there is a greater possibility of patients falling into the the hands of the ill-educated ayurvedic physicians. That is why we cannot subscribe to the idea of the necessity of a Medical Registration Bill being passed without taking into consideration the other systems. Now, we are placed in a position where we have to oppose this bill exactly because the provisions of this Bill do not satisfy the full demand that we have been making from the moment of the introduction of this Bill. When the Bill was introduced in 1110 the non-official members insisted on the necessity of bringing into the ambit of the Bill the ayurvedic physicians. The Legal Remembrancer at that time told specifically that the Select Committee will have the power to go into the question. Any how the Select Committee has gone into the Bill and amendments have now become out of order. We find no other possibility except to throw out the Bill now. That is the position where we stand now. I can only make one suggestion. The Bill is called Medical Registration Bill. It would appear that this Bill is exhaustive in its application. On the contrary, when we enter into the objects and reasons, we find that it is meant exclusively for the allopathic Doctors. Therefore the title of the Bill is misleading and I must say by the title, the ayurvedic physicians are certainly placed at an inferior status which we cannot accept. We do recognise a difficulty in passing a Bill for the ayurvedic physicians. We do recognise the difficulty in passing a Bill to comprehend all these branches. But at the same time we do emphasise the necessity for bringing under control the Ayurvedic and other systems of treatment. Therefore, to me the practical solution would be either to bring a comprehensive Bill which would include all these different medical branches or to give us a Bill exclusively meant for allopathic practitioners and permit us to bring at once another bill to Bring under control the Ayurvedic and other medical systems. (*Hear, hear*). One of these things will have to be done; either this Bill have to be postponed and a comprehensive bill have to be introduced or this Bill, from the title of course, must become a Bill for the allopathic practitioners and the Legal Remembrancer must assure us that a Bill would be brought in without delay including other practitioners. This had been first introduced in 1107 then again in 1110 and it has come now to the third Assembly. If we now throw it out it will come into the next Assembly and hence we have begun to realise the necessity of passing it. We are therefore sorry to throw out this Bill. But if it is called The Medical Registration Bill and if it is to include the other practitioners in this country who are probably doing greater and wide service, we have to accept this amendment.

MR. K. G. KUNJUKRISHNA PILLAI (*Neyyattinkara* cum *Trivandrum*): I am very much heartened by Mr. Padmanabha Pillai in my attitude to oppose the motion. Every argument I wanted to advance was put forward by the Honourable member. There does not seem to be any opposition to the carrying out of this Bill as such. What I understand is that the opposition to this Bill is a matter of prejudice,

[Mr. K. G. Kunjukrishna Pillai.]

That the provisions are not wide enough is what does not appeal to me. If the object of this Bill is good, if it will control fifty quacks the fact that it will not control another fifty quacks is certainly no argument to throw out this Bill and allow all the hundred quacks to practise in this country. That seems to me to be the gist of the argument. No body opposed the objects of the Bill. Every body wants control of the Allopathic quacks and I understand, very clearly now, that the other quacks must also be controlled. The motion before the House, if I understand it correctly, is that we may go to the next business of the Assembly which means that we must entirely dispose of this item. There is another method, namely, to ask for a reconsideration or recommittal of the Bill. This latter course would not have had the effect of throwing out the Bill completely, but it would have modified the Bill to the extent desired by the supporters of this motion. In any case the object of the Bill is correct. Much time and thought have been spent upon that matter. Because other people have not been included in the Bill, it does not logically or from a common sense point of view follow that we must throw out the Bill. I do not think there is any difficulty in bringing another Bill including the Ayurvedic and Homeopathic Doctors. Their conditions may not be the same as to enable co-registration with the Allopathic system. The allopathic system is an entirely different system. The control you may want to exercise on the Allopathic system may not be the same as that you want to exercise in the case of other systems. My submission is therefore that this Bill be fostered and carried and let another Bill be considered on its own merits if necessary to control other systems. This may be the first step. I do not know whether the Legal Remembrancer would object to this course. So far as this Bill is considered, my submission, therefore, to the House is that it is certainly not right to urge the postponment of this Bill on the ground that this Bill is not broad or wide enough to in- clude other people. Therefore, I invite the members of this House to think the matter over again and support this Bill and let us all unite to sponsor another fresh Bill to bring under control the Homeo- pathic and other systems. Therefore, I am sorry I have to oppose this motion.

VAIDYASASTRAKUSALA DR. (MRS.) M. PONNEN LUKOSE: May I ask the Honourable member whether, in his opinion, a practitioner of the Ayurvedic system or Homeopathic system is competent to give a certificate as required by law according to clause 4 (i) of the Medical Registration Bill?

MR. K. G. KUNJUKRISHNA PILLAI: I do not personally think that any such person is competent to give a certificate.

VAIDYASASTRAKUSALA DR. (MRS.) M. PONNEN LUKOSE: May I know the educational qualifications in that system of medicine, whether medical jurisprudence forms part of the study of the system?

MR. K. G. KUNJUKRISHNA PILLAI: I hardly understand the question. My impression is that the learned lady is more competent to give the answer than I am.

PRESIDENT: As I find the discussion is practically concluded I think it is my duty to indicate certain aspects of the matter for the consideration of the House.

Let us first of all consider the fundamentals of the situation. As has been pointed out by Mr. Kainikara Padmanabha Pillai, there does not seem to be much opposition to the ideas contained in this Bill excepting in so far as that opposition has taken two comparatively unimportant forms.

The first arises out of the title and the ostensible scope or ambit of the Bill. There is some kind of superiority or exclusiveness attributable to the Allopathic system which is not consistent, in the minds of some honourable Members, with the dignity and the efficacy of other systems of medicines. That aspect of the matter can be dealt with very easily, because, I think it is not beyond the powers of the legal ingenuity, with the co-operation of the honourable Members of this House, so to modify the wording of this Bill as to make it clear from the first line to the last line, that this Bill is solely intended to deal with the Allopathic system and the regulation of the practitioners of that system.

The next question is the position, the dignity and the treatment accorded to the practitioners of other systems. To emphasise this is not to solve the question. Let me furnish an example. Let us take Homeopathy, for instance. With regard to the details of this science, unlike some members, who, in addition to their legislative competence, seem to be also extremely well qualified to give medical disqusitions, I am unable to offer any opinion as to the root ideals, the practices, the inhibitions and the dangers. But I do happen to know, that in India there are certain Colleges of Homeopathy. I am not aware if they are well organised Colleges of Homeopathy satisfying the same tests as other Colleges which have sprung up in regard to the Allopathic and, up to a point, in regard to the Ayurvedic systems. In so far, therefore, any Bill that seeks to regulate the Homeopathic system, must bring into existence a Board of Examiners, of censors, or of supervisors who can see to it that a practitioner is aware of his responsibilities and is well equipped. The honourable Members of this House will have to consider whether it would be practical politics to devise a system of checking the Homeopathic practitioners as to make it possible to insist on a minimum Homeopathic qualification and to arrange for an adequate testing of those qualifications. If this honourable House comes to the conclusion that for the time being the harm done by the Homeopathic inept is probably less than the trouble involved in trying to bring into existence such a Board of Control, probably this House may come to the conclusion that the Homeopathic bill need not be passed at once. Let us take the Sidha Vaidya system. Speaking as a man equally ignorant or almost equally ignorant and therefore nervous to speak about that system. I only know this, that that system depends for its efficacy upon very careful and thorough refinement of very powerful drugs, metallic and otherwise, and to the extent to which this process in properly

[President:]

carried out to that extent would the medicament be powerful and potent and nevertheless innocuous. That seems to be the fundamental ideal of that system. The question is whether there are men specially capable within Travancore able to discuss the fitness or the qualification of the practitioners. It may be possible for the purpose of regulating the Sidha Vaidya system to invoke the assistance of fellow practitioners in a neighbouring province where it is more in vogue and where there are more practitioners and probably very high class practitioners. It may be that the honourable House may come to the conclusion that with the aid of those men as a board of general supervisors or inspectors that checking or licensing may go on in respect of the Sidha Vaidhya system.

So far as the Ayurveda system is concerned, I think the task is easy because on the whole there has been a certain amount of organisation already attempted. The honourable member Mr. Sivathanu Pillai was using an illustration which brought to my mind what happened in England. Perhaps the honourable member is not aware that one of the very first professional organisation, licensed in England was that of the barber surgeon or as he was originally termed "chirugeon". It was the barber who was the surgeon in medieval England and it was the barber who started, the modern surgery and it was through the barber that the modern surgeon came to his own. Therefore, there is no use of deriding the barber. It is only when the surgeon tries to become the barber or the barber tries to become the surgeon without apprenticeship that there may be trouble. My point is this. If the present Bill, suitably modified is allowed to go through, a bill for the purpose of Ayurveda may be quite easy and may be introduced practically immediately. It would be possible because there will be certain amount of talent already available. But the problem even then is not easy. There are certain hereditary Ayurvedic Physicians who have not passed any examinations and who do not go through the ordinary courses. But I do happen to know that there are some of them whose families have for centuries been in possession of certain drugs, medicaments and methods which are found to be efficacious and in which people repose confidence. Now it will be very difficult to ask the question of this—have you passed such and such an examination? What were your marks in medical jurisprudence? Anyhow the people who have faith in such physicians will go to them and take medicine and we shall be no wiser. Even in the England of today the Medical Council came to the conclusion that one Mr. Barker, now a Knight, should not be licensed for practising what was called "manipulative surgery". The Council came to the conclusion that it was absolutely unorthodox and that he ought to be struck of the rolls. But Mr. Barker grew more and more popular with the result that manipulative surgery is now recognised and Mr. Barker was knighted some years ago. I am not saying that the man who is not qualified should be allowed to practise: but in the conditions and according to the history and traditions of the country

there are particular difficulties in regard to certain branches of medicine. As an example I may say there was one great and illustrious physician Hakim Ajmal Khan, the descendant of the Mughal Emperor's physicians. For generations that family has been one of the most celebrated in northern India in regard to medicine. If in regard to Hakim Ajmal Khan it has been suggested that he should undergo an examination, the idea may have been scouted. It may be that there are similar men here, similar vaidyans, who might be called in even though they may not have certain technical qualifications. How are we going to regulate all that by our Bill? That is a matter that has to be carefully gone into. The Allopathic system depends on certain degrees, on certain recognised tests and on certain minimum qualifications and when people without those tests and qualifications try and put needles for instance into other people's bodies we may take action. This Bill is for the purpose of checking that tendency and that possiblity. It is possible, I believe it may not be very difficult in the conditions of Travancore where the Ayurveda system is very widely prevalent, to bring in a bill in regard to Ayurveda.

Mr. Sivathanu Pillai was very resentful in regard to the omission of Sidha Vaidya system. In this connection, if he is able to convince the House that there is a body of persons who will be able to regulate the minimum qualifications and the proficiency of Sidha Vaidya practitioners, by all means we may go ahead with that system. But I do not think it will be difficult to formulate and present to this House another Bill relating to those other branches of medicine and of surgery and I have no doubt that the spokesman of Government would be able to give the assurance that the best methods of doing so will be adopted. And it appears to me that it will be a pity that this Bill and its further progress should be hampered because of those other matters. At the same time let me say that it is not Government's intention to decry the merits of other systems or to shut our eyes to another aspect of the matter, namely, that in the whole of India the number of people who can be and are effectively served by the Allopathic systems of medicine are very very small in comparison with the number of persons who are served by the Allopathic system.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I oppose the motion on various grounds and I may be permitted to controvert some of the observations made by the honourable members who spoke in support of the motion. The leader of the National Congress Party said.........

PRESIDENT: In the first place would the honourable member be prepared to tell the House whether he believes he can formulate other bills within a certain limit of time in regard to other branches of medicine?

MR. PUTHUPALLI S. KRISHNA PILLAI: Before I answer that point definitely I have to make one or two observations. The Honourable member Mr. Kainikara Padmanabha Pillai said that his memory dating as it does so far back as seven years appears to be clearer than what I have myself learned and brushed up by reference to the reports of the

[Mr. Puthupalli S. Krishna Pillai.]

proceedings of this Assembly. I make the statement that when this Bill was referred to the Select Committee, the Law Member who was in charge of the Bill said that he was not prepared to give freedom to the Select Committee. He said that matters relating to the control of the Homeopathic system, the Ayurvedic system and the Sidha Vaidya system, would be considered *separately*. The motion was made in the House, it was adopted by the House, and the Bill was referred to a Select Committee. I make this statement because it did not appear to me that the honourable member Mr. Kainikara Padmanabha Pillai was justified in making the statement that he was sure that I was not correct.

MR. KAINIKARA M. PADMANABHA PILLAI: A word of personal explanation. I made no comparison between my memory and the honourable member's knowledge.

MR. PUTHUPALLI S. KRISHNA PILLAI: I have only to restate my position.

PRESIDENT: Apparently it is a conflict between one Member's memory and the recorded statement in the proceedings of this House. It may be that all that takes place in this House is not recorded.

MR. PUTHUPALLI S. KRISHNA PILLAI: This is what the Law Member said—

> "I may now reply to the debate. I know that there is a feeling in this House that provision ought to be made for the control of the Ayurvedic Medical practitioners. I quite appreciate that. But I fear that this Bill cannot help in the matter."

The reasons are also given——

> "The standards that are proposed in this Bill may not be quite applicable to the Ayurvedic Doctors. The matter may however be considered *separately*."

It was with reference to these that I made this statement.

The next point that I would place for the consideration of this House is that the motion before the House is not a motion for recommital but a motion to pass on to the next item in the order of business. What is the result of that? The result will be that if that motion is adopted, it will be considered that the business now before the House has been disposed of and we can have nothing more about this Bill afterwards. The honourable members of this House cannot therefore expect that at any time this Bill will come up in its present form or in any altered form. If on the other hand the matter had been referred back to the Select Committee the result would have been different. But the present motion means that the Bill goes out of this House and this House may not get any opportunity of discussing and legislating on this matter. Honourable members would be pleased to take serious notice of the result arising from the adoption of this motion. Honourable members seem to be under a wrong impression that Government are in favour of one set of quacks and that they are against another set of quacks. I may inform the House that, in legislating on such matters, it is the policy of the Government to deal with such things one by one;

and now, in the first instance, they propose to deal with quacks practising the Allopathic system of medicine. That does not mean that Government have declared that they will never deal with the quacks practicing the other systems of medicine. In fact, it was very clearly explained by Government that immediate necessity for preventing quacks has arisen only in the case of Allopathy and that in the case of quacks practicing other systems of medicine, there was no such imminent necessity.

Sir, it will certainly be a curious sort of mentality if honourable members are going to argue that, if homeopathic quacks or ayurvedic quacks were to be allowed to practice, they would see that allopathic quacks are also allowed to practice. The supporters of the ayurvedic or the homeopathic system seem to be jealous of the allopathic practitioners; otherwise, I cannot understand or explain their attitude of mind. As the mover of the Bill, I have stated that, in legislating on this matter, I shall first deal with allopathic quacks.

Sir, there appears to be some little misunderstanding about the purport of the Bill. It provides for the registration of medical practitioners holding recognised certificates, diplomas or degrees. Certainly this does not mean that the status and position of allopathic practitioners are sought to be improved, to the prejudice of ayurvedic or homeopathic practitioners. I can assure the House that there is absolutely no such idea behind this Bill.

Enough has been said here, Sir, in justification of the position taken up by the Government in dealing with the allopathic quacks alone in the first instance. No, doubt, there are ever so many other quacks yet to be eradicated. But, on the account, it should not be argued that, unless all quacks are eradicated at one stroke, none should be eradicated. That is not an argument which the representatives of the people will be justified in advancing. If I seek to introduce a Bill dealing with the extermination of mosquitoes, why do you argue that that shall not be done unless all other insects, leaches, caterpillars, lice, bugs, etc., are also eradicated at the same time? The argument now advanced against the present measure is like that. That was why I took so much time to explain the position of the Government.

Once again, Sir, I may assure the House that Government are certainly not in favour of any one set of quacks, ayurveda or homeopathy; they are dead against quacks of every kind; only, just now, they propose to deal only with quacks practising allopathy; and, one after another they will deal with the other quacks too. Gevernment deal with things one after another, and not all together; that is how we are pregressing. That was how this Bill was introduced.

Sir, this Bill was introduced in 1934 more than 4 years ago. It was pending in this House for nearly two years: and in the Select Committee also it was pending for several months. The Select Committee repeatedly discussed the principle of the Bill, and decided to consider the Bill clause by clause.

MR. KOTTALIL P. ABRAHAM: Is the Hon. Member convinced that similar Bills are necessary for the control of other quacks?

MR. PUTHUPALLY S. KRISHHA PILLAI: I havd already said, Sir, that Government are dead against quacks practicing ayurveda, homeopathy or the Sidha system, or for that matter any other system of medicine.

PRESIDENT: Not only medical quacks; Government are against all sorts of quacks (*Laughter.*)

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes, Sir. They are deed againstquacks of all kinds, and are prepared to take steps for their complete eradication. But, for that, it would not be enough if one Bill is introduced saying that all qnacks should be severely dealt with and punished. Each set of quacks has to be dealt with in a different way and at the proper time. Now, here are the allopathic quacks, the most important, the most dangerous of all medical quacks; they go about with their lancets' needles, stethoscopes and various other weapons. No argument is needed to justify the step the Government have taken in attempting to bring them under control. In country parts, to my knowledge, the e are any number of these quacks practising allopathy curious caees of mal-treatment by these allopathic quacks have come to my own knowledge in criminal cases. In one case, actually, tailor's needle was used to suture a wound inflicted. The question actually arose in the criminal case whether it was the Vaidyan who reated the complainant, or the accused who inflieted the wound that was more responsible for the injury found on the complainant. I am only giving just one example; Hon. members are fully aware of the grave danger that is apprehended from this class of people. I take it that it will be agreed that such danger is greater so far as the allopathic quacks ore concerned than quacks practising other systems of medicine. As I submitted, Government deal with such matters one after another in the order of importance and gravity.

Now, Sir, if after 5 years, after pending so much of public money, after spending so much of the valuable time of the honourable members of this House, this House were to stay that some quacks have been left out and that for that reason this Bill should be thrown out. I submit it would be a great injustice done to the framer of this Bill and to the member in charge of it, and a positive disservice to the entire public. As I said, Government are convinced of the urgent necessity for saving the country from the nefarious practices of these quacks. Certainly, other quacks will also engage the attention of the Government in due course. They have made up their minds about that; only they have not yet been able to decide how it ought to be done.

Sir, the leader of the National Congress party just now said that if the Legal Remembrancer would give an under-taking to bring forward *at once* another bill for other systems of medicine, the members of his party would oppose the present motion for postponing the consideration of the Bill, and that, if not, they would all support the motion. Sir, I am really anxious to know what the leader of the National Congress party

meant by the expression "at once." I would certainly have given the undertaking he asks for had he not used those two words which really make it difficult for me to give any such undertaking. If all that is wanted is that the other quacks also should be dealt with without delay, I am quite ready to give the undestaking to the House. It would be ruinous policy for the House to throw out this Bill merely because I am not able to assure them that I shall bring forward at once the other Bill that they want that depends on the time at the disposal of the Government. I submit, Sir, that this Bill is not intended for the benefit of any particular class of persons; it is intended for the benefit of the common weal. We shall certainly deal with all sorts of quacks one after onother; Government shall lose no time in doing that.

MR T.C. KESAVA PILLAI: Is the hon'ble member agreeable to make the necessary verbal changes in the Preamble and the Title of the Bill with a view to indicate clearly that this Bill relates only to allopathic quacks?

MR. PUTHUPALLI S. KRISHNA PILLAI: I shall do that to the extent to which it will not have the effect of widening the scope of the present Bill. Sir, I am bound by the Rules of this House; the Bill the principle of which has been accepted by the House, cannot now be enlarged in its scope by any mere amendment. That is all my point. I am agreeable to the member's suggestion.

MR. P. S. MAHOMED: ഗവൺമെന്റ് അംഗീകരിക്കപ്പെട്ടവരും, ഗവൺമെന്റുദ്യോഗത്തിലിരിക്കുന്നവരും ആയ ആയുർവേദ വൈദ്യന്മാർ കൊടുക്കുന്ന സർട്ടിഫിക്കറ്റുകളും ചില സംഗതികളിൽ അംഗീകരിക്കാറില്ലേ?

MR. PUTHUPALLI S. KRISHNA PILLAI: Such certificats are being acted upon by Courts for releasing judgement-debtors, for instance; in such cases great latitude is generally being shown. But they are never acted upon in cases where the Statute specifically provides for a medical certificate. For instace, no Vydian has so far dared to issue a certificate, under the Cr. P. C., as to the cause of death of a person or the cause of injuries on a person.

MR. P. S MAHOMED: ഒരാളിനു സുഖമില്ലെന്നുള്ളതിന് ഒരു സർട്ടിഫിക്കറ്റ് ഹാജരാക്കേണ്ടിവരുമ്പോൾ ആയുർവേദ വൈദ്യന്മാരുടെ സർട്ടിഫിക്കറ്റുകളും ഉപയോഗപ്പെടുത്തുന്നില്ലേ?

MR. PUTHUPALLI S. KRISHNA PILLAI: All that is said in this Bill is that, where any law, rule or byelaw, requires the production of a medical certificate, such certificate shall be issued by a registered medical practitioner. Is it the opinion of any honourable member here that certificates are now being issued by the practitioners of the ayurveda or the sidha system for instance, in cases where any statute provides for a medical certificate as *prima facie* evidence or proof of

[Mr. Puthupalli S. Krishna Pillai].

the facts contained therein? Is it the member's view that a Sidha Vydian's certificate is now being accepted and acted upon in such cases? For instance, in the case of a certificate issued by a chemical examiner, the contents of the certificate are accepted as correct even without the examination of the Chemical Examiner. Will it be possible for any judge to rely in the same manner on a certificate issued by a Sidha Vaidyan? Certainly not. I therefore request the House not to throw out the present Bill merely because it does not deal with certain sets of people, or because I am not able to give an undertaking that another Bill, dealing with those not dealt with here, shall be introduced *at once*.

MR. P. SIVARAMA PILLAI (*Menachil* cum *Todupuzha*): As one who has taken part in the deliberations of the Select Committee on this Bill, although I am not permitted to mention here what took place there, I may assure the House that some of us did raise the question of including Ayurveda and other systems of medicine ....

PRESIDENT: The Honourable Member is doing exactly what he said he was not permitted to do.

MR. P. SIVARAMA PILLAI: Sir, the position of the National Congress party has been made sufficiently clear by the leader of the National Congress party. The Legal Rememberancer has been harping on the expression "*at once*" used by the leader of the National Congress party. I submit, that those two words imply only, reasonable number of days or months, in a matter of this kind. I may perhaps add that, if the present motion is not carried, it would be quite open to the members of the National Congress party to bring forward another comprehensive bill even without seeking the aid of the Legal Remembrancer. For that I think we need not wait upon the Legal Remembrancer. "At once" only means "within reasonable time".

PRESIDENT: I take it, Mr. Legal Remembrancer, that you do not seek to draw any special distinction between "reasonable time" and "at once"; your idea is that you will be prepared to sponsor a bill within reasonable time.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir.

PRESIDENT: If that is so, there may not be any further controversy on the matter as to whether it should be one Bill or more than one Bill.

MR. PUTHUPALLI S. KRISHNA PILLAI: The Bombay Legislature has dealt with the Indian systems of medicine in one Bill; and there is one clause in it relating to homoeopathy.

PRESIDENT: That clause does not go very far.

MR. PUTHUPALLI S. KRISHNA PILLAI: So far as we are concerned, the best course would be to deal with ayurveda and homoeopathy in one Bill; if they are split up into two Bills, they would both be very small.

The motion for postponement of the Bill was put to vote and carried.

MR. S. NARAYANA PILLAI; I demand a poll.

A poll was taken and the House divided as follows:—

AYES—35.

1 Messrs. Kainikkara M. Padmanabha Pillai
2 ,, K. Kunju Panicker
3 ,, R. Sivaraman Nair
4 ,, P. C. Adichan
5 ,, K. Dominic Joseph
6 ,, N. Kesava Panicker
7 Srimati T. Narayani Amma
8 Mr. K. G. Govindan
9 ,, N. R. Krishnan
10 ,, Narayanaperumal Nadar
11 ,, N. Ramakrishna Pillai
12 ,, M. Sivathanu Pillai
13 ,, K. R. Narayanan
14 ,, T. T. Kesavan Sastri
15 ,, A. K. Kumaran Vydian
16 ,, S. Narayana Pillai
17 ,, R. Narayanan Nambuthiri
18 Sahib Bahadur P. S. Muhomed
19 Messrs. Puliyoor T. P. Velayudhan Pillai
20 ,, M. L. Janardanan Pillai
21 ,, P. Sivarama Pillai
22 ,, Padiyara Joseph Kunju
23 ,, T. C. Kesava Pillai
24 Srimati Devaki Antharjanam
25 Mr. Meenathiri N. Kesava Panicker
26 ,, K. C. Karunakaran
27 ,, D. Francis
28 ,, N. Narayana Kurup
29 ,, J. E. A. Pereira
30 ,, C. Jebamony Nadar
31 ,, Thamarapallil Kochu Tommen
32 ,, N. John Joseph
33 ,, P. Narayana Pillai
34 ,, E. E. Pandarathil
35 ,, G. Velu Pillai

NOES—29

1 Mr. Kottalil P. Abraham
2 Sahib Bahadur V. Chandamiah
3 Mr. C. V. Chandrasekharan
4 ,, S. Chattanatha Karayalar
5 ,, M. L. D' Cruz
6 Dr. M. K. Gopala Pillai
7 Mr. M. Govinda Pillai
8 ,, S. Govinda Pillai
9 ,, Janardhanan Nair
10 ,, N. V. Joseph
11 ,, Joseph Vithayathil
12 ,, M. G. Kesava Pillai
13 ,, S. Krishna Iyer
14 ,, Puthupalli S. Krishna Pillai
15 ,, Thariathu Kunjithomman
16 Mr. K. G. Kunjukrishna Pillai
17 ,, Varkala K. Madhavan
18 Sahib Bahadur M. K. Mackar Pillai
19 Mr. P. V. Mathai Chemparathy
20 ,, M. K. Nilakanta Aiyar
21 ,, M. P. Paramesvaran Pillai
22 Vaidyasastrakusala Dr. Mrs. M. Poonen Lukose
23 Mr. M. Ramachandra Rao
24 Dr. G. Raman Pillai
25 Mr. M. P. Raman Pillai
26 ,, M. Ramiah Pillai
27 ,, G. N. Tampi
28 ,, J. W. Tolson
29 ,, E. P. Varghese

NEUTRALS—Nil.

The motion was carried; and the bill was postponed.

THE TRAVANCORE CONTRACT BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI : I beg to present the report of the Select Committee on the Travancore Contract Bill, and to move that the Bill as reported by the Select Committee be taken up, for consideration.

MR. C. V. CHANDRASEKHARAN : I second it.

The motion was put and carried.

Clauses 1 and 2.

The question that clauses 1 and 2 do stand part of the Bill was put to vote and carried.

The clauses were added to the Bill.

Clause 3

MR. R. SIVARAMAN NAIR : Sir, I beg to move the following amendment:—

In Clause 3 substitute "and" for the last "or".

Under the clause, the communication of proposals the acceptance of proposals and the revocation of both i. e. proposals and acceptance can be done by any act or omission of the party, proposing accepting or revoking, by which he intends to communicate such proposal, but which may not have that effect or by any act or omission which has that effect but not the intention.

It would appear from a reading of the section that acceptance of proposals can be done by any act by which the party intends to communicate such acceptance but which has not that effect. It is not necessary that the act must have the legal effect. The other party need not even know, that the act of the party was intended to create that effect.

A offers to B a house for sale for Rs. 500. B scratches his head and goes away. Under the Clause B's scraching his head is sufficient communication of acceptance if he can prove that by scratching his head he intended to communicate his acceptance of A's offer. A might have thought that he scratched his head simply because he wanted to scratch his head. He might not have known that B's scratching his head was intended to communicate to him that he was accepting the offer. Now can it be said that the communication of the acceptance is legally effective Now under the clauses, it would appear that B's scratching his head is sufficient to communicate the proposal.

Coming to the 2nd part, communication of acceptance can be done by an act which has that effect but which act was not intended to communicate such acceptance etc. Here there is the effect but not the intention. A offers to sell a house to B ; , Before revocation of the offer B overhears a conversation between A and C inconsistant with the offer i. e. B hearing a conversation between A and C which

was not intended for his ears. Now can it be said that this over hearing of the conversation is sufficient communication of the revocation of the offer. This cannot be because here there is no intention to communicate the intention to revoke the offer.

In both these cases the communication is inchoate and under the clauses both these inchoate communications will be valid and legal communications. Such inchoate communication will have no legal effect only because of the subsequent section.

It will be both simple and more rational to say that a communication to be effective must have both the intention and the effect and this can only be achieved by changing 'or' into 'and'. Hence the amendment.

MR. PUTHUPALLY S. KRISHNA PILLAI: I oppose the amendment. This amendment, I presume, is intended to convey the idea that the act intended for communication as well as the actual effect of communication should be present in order to amount to actual communication under the law. The question is whether the revocation of proposal or acceptance should be deemed to have been made by any act or omission by which the party intends to communicate his proposal or revocation. The provision in the bill runs thus:-

> "The communication of proposals, the acceptance of proposals and the revocation of proposals, and acceptance, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation *or which have the effect of communicating it.*"

In regard to the expression "or" occurring in the clause, I may say that this clause 3 is the same as Section 3 of the British Indian Contract Act. As regards that expression, the commentators have said that it would seem both simpler and more rational to say that an act intended to communicate but failed to say so is not a communication at all. They also say that it will be more rational to use the expression "and" for the word "or". As the expression stands at present, the commentators have only said that it is good so far as it goes. All that they say is, a more rational meaning could be given to it by the alteration of the expression "or" into "and". But they have not followed it up.

In enacting commercial laws, one principle which I have stated already is to have uniformity in laws with that obtaining in other countries. In this particular respect I am unwilling to say that we shall be justified in departing from the principle underlying this section. It is not a mere verbal change that is sought for, but a change in principle. The commentators have not accepted that. The British Indian Legislatures too have not changed the expression "or" into "and" though the commentators have said that a more rational meaning could

[Mr. Puthupally S. Krishna Pillai.]

be given to it by such a substitution, Moreover, we have been following the principles of laws contained in various sections of the Indian contract Act. Under these circumstances, I oppose the amendment because it seeks to make a fundamental change in the principle already accepted and acted upon. It is not a mere verbal alteration that is now urged by the member.

PRESIDENT: I may say that members of the House would be well advised if they accept the law as laid down in the Indian Contract Act of 1872. It has been commented upon and cases have been decided on it. I know there were differences of opinion in that connection. Supposing a man had intended to give an answer but had kept it locked in his drawer and his servant has released it somehow, in such a case, would the master be bound by it? Such aspects have been dealt with in a series of decisions. It is not desirable to change words here or there, and depart from the law obtaining in British India. It will be safer to proceed on the basis of the enactment in force there, which has stood the test of time.

MR. R. SIVARAMAN NAIR: I beg to withdraw my amendment.

The question that clause 3 stand part of the Bill was then put and carried. The clause was added to the Bill.

Clauses 4 to 15.

The question that clauses 4 to 15 stand part of the Bill was next put and carried. The clauses were added to the Bill.

Clause 16.

MR. JOSEPH VITHAYATHIL: Sir, I move that sub-clause 4 may be deleted. This sub-clause was proposed by the Select Committee. Although it relates to a question of procedure burden of proof is a matter of vital importance in practical application of the law. In the Indian Contract Act there is an explanation to section 16 which says that nothing in that section should be deemed to affect the provisions of section 111 of the Indian evidence Act. That explanation is incorporated as sub-clause 4 of clause 16 of this Bill. My point is that it is not proper to do so. It is true, we have not got an evidence Act here, and therefore it is not possible to make a reference to section 111 as it is done in the Indian Contract Act. Section 111 of the evidence Act applies generally to all cases of transactions between parties one of whom stands to the other in a position of active confidence. Such cases may arise in respect of a criminal charge, tort or contract. The good faith of a transaction may be a defence in a criminal prosecution relating to offences like criminal misappropriation, criminal breach of trust, etc., brought against an agent by the principal. Similarly the good faith of a transaction may be a matter in dispute in an action in tort between parties one of whom occupies a position of active confidence towards the other. Thus section 111 of the evidence Act refers to a matter of

general application and is not limited to cases of contract. If we incorporate that explanation in section 16 of the Indian Contract Act as a sub-clause to clause 16 of our Bill, what will be the effect? Clause 16 relates to undue influence. Before we consider clause 16 we have to see what clause 14 says. It lays down the conditions under which a consent will be deemed to be free. It should not be caused by any one of the five conditions mentioned in that clause. They are: (1) Coersion as defined in section 15, (2) Undue influence as defined in section 16, (3) Fraud as defined in section 17, (4) Misrepresentation as defined in section 18 and (5) Mistake subject to the provisions of sections 21, 22, and 23. So, necessarily section 16 must relate to the definition of undue influence. But sub-clause (4) does not necessarily relate to the question of undue influence. As I said before, it relates generally to transactions between parties one of whom stands to the other in a position of active confidence and in which the question of good faith of the transaction arises for consideration. Therefore from the point of view of mere form, it will not be proper to incorporate that provision of general application in the Indian Evidence Act into this clause of the Contract Act. Every thing contained in section 16 must relate to the definition of undue influence, or else section 16 will not be in conformity with section 14. It has also to be borne in mind that bad faith in itself is not a circumstance that will invalidate a consent. It cannot affect the validity of a contract which is otherwise valid in law. Of course bad faith may be one of the elements that constitute 'fraud', undue influence, 'coercion', or 'misrepresentation.' But that does not mean that 'bad faith' is the same as 'undue influence.'

Now we shall consider how far sub-clause 4 agrees with sub-clause 3. Sub-clause 3 reads thus:

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

It has to be noted that according to clause 16 a person who is in a position to dominate the will of another is the same as one occupying a position of active confidence towards that other.

PRESIDENT: It need not be so. Your confidential clerk is not necessarily in a position to dominate your will at your expense; yet he is a person occupying a position of active confidence.

MR. JOSEPH VITHAYATHIL: For that matter it is necessary to consider sub-clauses 1 and 2 of clause 16. They are: 16. (1) A contract is said to be induced by "undue influence" where the relations

[Mr. Joseph Vithayathil.]

subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another.

(*a*) when he holds a real or apparent authority over the other, or when he stands in a fiduciary relation to the other; or

(*b*) when he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

So, according to sub-clause (2) (*a*) in all cases where one person stands in a fiduciary relation to another he will be deemed to be in a position to dominate the will of that other in regard to the transaction in respect of which he stands in a fiduciary relation. My clerk will be deemed to be a person capable of dominating my will in respect of a transaction with which he is entrusted by me. He is my agent so far as that transaction is concerned. In the case of transactions performed by an agent on behalf of a principal, although the former may be a servant of the latter, for the purpose of definition of undue influence the agent will be deemed to be a person in a position to dominate the will of the principal. He may also be described as a person standing to the principal in a position of active confidence. Thus it is seen that a person who is holding a position of active confidence and who therefore comes under sub-clause (4) must necessarily be a person that comes under sub-clause (2) (*a*) also. In other words sub-clause (2) (*a*) and sub-clause (4) relate to the same category of persons *i. e.*, persons who hold a fiduciary relation and who therefore occupy a position of active confidence. If these two sub-clauses relate to the same category of persons and if sub-clause (4) refers to the question of undue influence, which is sought to be defined by clause 16, we find that there is a real conflict between sub-clauses (3) and (4). For under sub-clause (3) in order that the presumption should arise certain conditions have to be satisfied.

MR. KOTTALIL P. ABRAHAM: Does a conflict arise?

MR. JOSEPH VITHAYATHIL: It does. Sub-clause (3) lays down certain conditions and until they are satisfied the presumption would not arise. Whereas, under sub-clause (4) these conditions need not be satisfied.

Under sub-clause (3), for the presumption to arise the transaction must appear either on the face of it or on the evidence adduced, to be unconscionable. The sub-clause is clear on the point. The Privy

Council also has held so in the case of *Ragunath Prasad* v. *Surja Prasad*. But sub-clause (4) does not lay down any such condition and under that sub-clause there is an initial burden to prove the good faith of the transaction. This difference between the two sub-clauses will be of vital importance in practical application. Section 111 of the Indian Evidence Act is based on a well-known English rule of equity If we want to adopt that principle in its entirity the better thing will be to amend sub-clause (3) itself by taking away the conditions laid down in that sub-clause rather than create a conflict between two sub clauses in the same clause. It may also be noted that even the English rule is not an invariable one. It has been held that it does not apply to a case of gift by a wife to the husband, although it cannot be denied that the husband is a person who stands to the wife in a position of active confidence. It has also been held that the rule may not apply to cases of family settlement under which a child may give up his right to certain properties in favour of the parents. In such cases it will be for the child to prove that the family settlement was brought about by undue influence. I mention these cases only to show that the rule is not an absolutely invariable one. At the same time it cannot be denied that it is a well-recognised rule of English law, and I am not in any way questioning the soundness of that rule. The point is whether it would be proper to incorporate that rule in clause 16 in the manner in which it is done and thereby create an uncertainty with regard to the interpretation of that clause. The fact that we have not got an Evidence Act will not be sufficient justification for embodying two mutually conflicting sub-clauses in the same clause. If we are not satisfied with sub-clause (3) let us amend it. In any case sub-clauses (3) and (4) cannot go together, and sub-clause (4) has not got a proper place in clause 16. I am therefore for deleting that sub-clause.

MR. PUTHUPALLI S. KRISHNA PILLAI: I oppose the amendment. Sub clause 4 of clause 16 is really section under 111 of the Indian Evidence Act. No other alteration is made. This new clause has been added for the simple reason that there is no Evidence Act in this State. It is found that section 16 of the Indian Contract Act was the result of a subsequent legislation for the purpose of curing a defect which existed in the original Act. Sub-clause (3) deals with a rule of evidence. Sub clause (4) is more comprehensive. Sub-clause (3) deals with cases of undue influence where one person is in a position to dominate the will of another and it appears that the transaction on the face of it is unconscionable. Clause 3 covers only such cases. Sub-clause 4 reads as follows :—" Notwithstanding anything contained in sub-clause 3 between the parties one of whom is in a position of active confidence." I suppose it is very clear that there is a difference between a person standing in the position of active confidence and the person standing in fiduciary relationship.

MR. JOSEPH VITHAYATHIL: Is there any difference between active confidence and those standing in a fiduciary relationship with the other?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, there is. As a matter of fact, the provision contained in Section 111 of the Indian Act is intended to provide a general rule applicable to all cases where one person stands in a position of active confidence. But sub clause 3 provides for cases where one person is able to dominate the will of the another.

Without sub clause (4) it may appear that sub clause (3) curtails the scope of section 111 of the Indian Act. Sir Smith V Key referred, to at page 98 of Pollock and Mullas Indian Contract Act.

MR. N. RAMAKRISHNA PILLAI: Is good faith essential to be defined in all cases of undue influence?

MR. PUTHUPALLI S. KRISHNA PILLAI: That need not be.

PRESIDENT: I hope honourable members will allow me to deal with the subject as a lawyer for the time being. The law relating to presumptions in the case of contracts entered into by persons occupying position of fiduciary relationship is dealt with by Leake, one of the recognised authoritiss on the Law of Contract. Leake says:—

> "The principle applies in all cases of persons dealing with others to whom they stand in a recognised fiduciary relation, as trustees with beneficiaries, solicitors with clients, parents with children, guardians with wards, and the like; in which cases the presumption of undue influence arises in law, and it lies upon such a person to prove that he took no advantage of his position or influence."

The fact is that so far as the British Indian Enactments are concerned, Section 16, sub sections 1 to 3, appear in the Contract Act and sub-clause 4 as it appears in the bill appears in the Evidence Act, But it has been made clear that one does not restrict the scope of the other. The position that is sought to be taken in this enactment is this: Under Section 16 sub-sections 1 to 3 a certain contract is either induced by undue influence or not. If it is induced by undue influence, then certain consequences follow. Sub-clause 4 is, as honourable members will realise, couched as a proviso. As is recopied in the law relating to the construction of documents or statements, a proviso is sometimes an exception and sometimes is tantamount to an independent enactment. Really speaking sub-clause 4 is an independent enactment bringing into force section 111 of the Indian Act. It is a supplement to sub-sections 1, 2 and 3, and it is something more *i. e.*, a definite extension. If the honourable member succeeds in removing sub-clause 4, the result will be very unfortunate, because there is no Evidence Act in Travancore; and the impression may be created that the doctrine of undue influence is limited

to the four corners of sub-clauses 1 to 3, and our courts will be put to great difficulties. Perhaps the honourable member himself may agree with courts that the doctrine of active confidence is not incorporated in this Act, that the Evidence Act does not apply and that therefore the doctrine has not been accepted by this Legislature. In defining undue influence it will be better that we adopt all the principles which govern that doctrine elsewhere. It will be safer to do so.

Clause 16 was put and carried.

Clause 16 was added to'the Bill.

Clauses 17 to 26.

Clauses 17 to 26 were put and carried. Clauses 17 to 21 were added to the Bill.

Clause 27.

MR. R. SIVARAMAN NAIR: Sir, I do not move the motion in the printed list. I have got another. I will move that. The motion is to add as proviso to clause 27.

> "Provided that an agreement by a person before or after his marriage, with his wife not to marry again is valid".

The clause as it now stands is very wide and quite unguarded. .... Every agreemeet in restraint of the marriage of any person is void, whatever be the restraint. The word restraint is not qualified. Restraint may be partial or it may be absolute. Under the clause restraint of any kind will be void.

Under English law it appears that partial restraint is not void. It appears that in England, a contract not to marry a particular person or any one of a certain definite class will be held good. If that be the law in England, is there any reason why the law should be different in England ?

The section is based on public policy and public policy alone. Let us see whether there is anything in public policy to have such absolute restraint.

Under the Mohammedan law a man have at the same time four wives. If he wants yet to marry another, all what he has to do is to tell her that he is divorcing here and then wait for another short period and marry again. If he wants to marry one more, divorce one more, and then he can marry the sixth. This he can do till the hundredth or even more.

PRESIDENT: The Mohommedan law has provided for a crude system of dowries.

MR. R. SIVARAMAN NAIR: Yes Sir. The question is whether there is anying against public policy in the proviso; Some consider the case of a Mohammedan who has married ninty nine girls, wants to marry the 100th. Is there anything against public policy, if the 100th victim

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of this unscrupulous man, asks him to enter into a contract with her not to marry again while she is living. In this connection it must also be remembered that it is not obligatory for a Mohammedan to have at least four wives at a time. If that was obligatory surely the provisions of the proviso would have been against public policy. Since polygamy is not compulsory under Mohammedan law, I see nothing contrary to public policy in having partial restraint.

PRESIDENT: Are you really satisfying your object in this amendment? Now the contract is enforced by damages or at the worst by imprisonment in the case of default of those damages. A agrees not to marry again, he marries; what happens then?

MR. R. SIVARAMAN NAIR: All I want is that such contract must be made valid. Under the general words of the section it would appear that they will not be valid.

PRESIDENT: One person may ask for damages for breach of contract. You have not provided for the penalty for marriage. It is a substantive convention provision. The honourable member will have to answer all these.

MR. R. SIVARAMAN NAIR: The proviso says that such contract will be valid. Under the clause as it stands such contracts will not be. So under the existing clause a girl cannot even enter into such a contract and no court will enforce such contracts. If it is first held that such contract are valid then, it will be time enough to think of the consequences of its breach. If the girl can get only damages, that will do and it will be sufficient restraint so far as he is concerned. I was at the question of public policy. To me it appears, Sir, that there is nothing against public policy in declaring valid a contract which imposes a partial restraint of marriage.

PRESIDENT: In England under the common law of the land, monogamy is the rule whereas under the personal law of the Mohammedans and Hindus monogamy is not a part of the personal law of the persons.

MR. PUTHUPALLY S. KRISHNA PILLAI: I oppose the amendment. As a matter of fact, such a provision is necessary for the purpose of maintaining the principle enunciated in clause 27.

The mover now wants this additional provision to be made. This proviso is not necessary for the purpose of the Contract Act.

MR. R. SIVARAMAN NAIR: Sir, I do not press the amendment.

The amendment was, by leave of the House, withdrawn.

The question whether clause 27 stands part of the Bill was put and carried.

Clause 27 was added to the Bill.

Clauses 28 to 46.

The question whether clauses 28 to 46 form part of the Bill was put and carried.

Clauses 28 to 46 were added to the Bill.

Clauses 47 to 62.

MR. R. SIVARAMAN NAIR: Sir, I do not move the amendment under this clause.

The question whether clauses 47 to 62 stand part of the Bill was put and carried.

Clauses 47 to 62 were added to the Bill.

Clauses 63 to 123.

MR. R. SIVARAMAN NAIR: Sir, I do not move the amendments up to the seventh one.

The question whether clauses 63 to 123 stand part of the Bill was put and carried.

Clauses 63 to 123 were added to the Bill.

Clause 124.

MR. JOSEPH VITHAYATHIL: Sir, in clause 124, I beg to move that the words "policy holders" may be substituted by the words "policy brokers". It is printer's mistake and it ought to be corrected.

MR. KOTTALIL P. ABRAHAM: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: In printing, this mistake has appeared. I accept that amendment.

The question whether clause 124, as amended, stands part of the Bill was put and carried.

Clause 124 was added to the Bill.

Clauses 125 to 185.

The question whether clauses 125 to 185 stand part of the Bill, was put and carried.

Clauses 125 to 185 were added to the Bill.

Clauses 186 to 193.

MR. R. SIVARAMAN NAIR: I do not move the amendment.

The question whether clauses 186 to 193 stand part of the Bill was put and carried.

Clauses 186 to 193 were added to the Bill.

PREAMBLE AND TITLE.

MR. PUTHUPALLI S. KRISHNA PILLAI: I move that the preamble and title do stand part of the Bill.

The question whether the preamble and title stand part of the Bill was put and carried.

The preamble and title were added to the Bill.

THIRD READING OF THE TRAVANCORE CONTRACT BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I beg to move that the Bill be passed.

MR. C. V. CHANDRASEKHARAN: I second it.

The question whether the Bill be passed was put and carried.

The Bill was passed.

THE TRAVANCORE SALE OF GOODS BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I rise to present the report of the Select Committee on the Sale of Goods Bill and move that the Bill as revised be taken into consideration.

MR. C. V. CHANDRASEKHARAN: I second it.

PRESIDENT: There are no amendments. The question before the House is whether clauses 1 to 65 stand part of the Bill.

The question was put and carried.

Clauses 1 to 65 were added to the Bill.

PREAMBLE AND TITLE.

The question whether the preamble and the title stand part of the Bill was put and carried.

The preamble and the title were added to the Bill.

THIRD READING OF THE TRAVANCORE SALE OF GOODS BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: I beg to move that the Bill be passed.

MR. C. V. CHANDRASEKHARAN: I second it.

The question whether the Bill be passed was put and carried.

THE TRAVANCORE PARTNERSHIP BILL.

MR. PUTHUPALLI S. KRISHNA PALLI: Sir, I beg to present the report of the Select Committee on the Travancore Partnership Bill and move that the Bill as revised be taken into consideration.

MR. C. V. CHANDRASEKHARAN: I second it.

The question whether the Bill be taken into consideration was put and carried.

The question whether clauses 1 to 72 and the Schedule form part of the Bill was put and carried.

Clauses 1 to 72 and the Schedule were added to the Bill.

PREAMBLE AND TITLE.

The question whether the preamble and title stand part of the Bill was put and carried.

THIRD READING OF THE TRAVANCORE PARTNERSHIP BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I beg to move that the Travancore Partnership Bill be passed.

MR. C. V. CHANDRASEKHARAN: I second it.

The question whether the Bill be passed was put and carried.

THE TRAVANCORE SPECIFIC RELIEF BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I beg to present the report of the Select Committee on the Travancore Specific Relief Bill and move that the Bill as revised be taken into consideration.

MR. C. V. CHANDRASEKHARAN: I second it.

The question whether the Bill be taken into consideration was put and carried.

Clauses 1 to 7.

The question whether clauses 1 to 7 stand part of the Bill was put and carried.

Clauses 1 to 7 was added to the Bill.

Clause 8.

(The amendment of Mr. Jebamony Nadar fell through as the member was not present at the time)

The question whether clause 8 stands part of the Bill was put and carried.

Clause 8 was added to the Bill.

Clauses 9 to 50.

The question whether clauses 9 to 50 form part of the Bill was put and carried.

Clauses 9 to 50 were added to the Bill.

Clause 51.

MR. JOSEPH VITHAYATHIL: Sir, I beg to move that in clause 51, the following may be added after the word "thereof" :—

> "and in the place of the words 'under Section 32 of the Act' so repealed from Article 2 of the first Schedule of that enactment the words "Under section 8 of the Travancore Specific Relief Act" shall be substituted."

I believe that it was as a result of oversight that these words were not included in the clause. If these words are not added the position would be this. The period for recovery of possession of immovable property under Section 32 of the Limitation Act is six months. Section 32 is taken away from the Limitation Act and the provision contained in that section is incorporated into Section 8 of the Specific Relief Act.

[Mr. Joseph Vithayathil]

If from article 2 of the 1st schedule of the Limitation Act the words "under Section 32 of the Act" are taken away and if nothing is inserted in their place the period of six months prescribed in that article will apply to all suits for recovery of possession of immovable property even if such suits are based on title. But there is another article in the Limitation Act which prescribes a period of 12 years for suits for recovery of possession of immovable property. Article 2 evidently applies to summary suits and it has to be made clear that it applies only to such suits. Therefore it is necessary that the words "under Section 8 of the Travancore Specific Relief Act" should be inserted in Article 2 in the place of the words deleted from that article.

PRESIDENT: There seems to be a clerical mistake. It is intended to advert only to summary suits, whereas if the amendment is not accepted it will refer to all suits for recovery of possession of immovable property.

MR. PUTHUPALLI S. KRISHNA PILLAI: I may be permitted to state that these amendments are all belated ones and that I may be given some little time to look into the matter.

The question that the consideration of the Specific Relief Bill be held over for some time was put and carried.

THE TRAVANCORE ARBITRATION BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I beg to present the report of the Select Committee on the Travancore Arbitration Bill and submit that the Bill, as reported, be taken into consideration.

MR. C. V. CHANDRASEKHARAN: I second it.

The question that the Bill be taken into consideration was then put and carried.

Clauses 1 to 4.

The question that clauses 1 to 4 do stand part of the Bill was put and carried and the clauses were added to the Bill.

Clause 5.

MR. JOSEPH VITHAYATHIL: I beg to move that in clause 5 subclause (1) the words "as the case may be" may be added. It is only a clerical amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: I accept the amendment.

The question that clause 5, as amended, do stand part of the Bill was put and carried and the clause, as amended, was added to the Bill.

Clauses 6 to 10.

The question that clauses 6 to 10 do stand part of the Bill was put and carried and the clauses were added to the Bill.

Schedules I & II.

The question that Schedules I and II do stand part of the Bill was put and carried and Schedules I and II were added to the Bill.

Preamble and Title.

The question that the Preamble and Title of the Bill do stand part of the Bill was put and carried and the Preamble and Title were added to the Bill.

THIRD READING OF THE TRAVANCORE ARBITRATION BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: I beg to move that the Travancore Arbitration Bill. as amended, be passed into law.

MR. C. V. CHANDRASEKHARAN I second it.

The question that the Bill, as amended, be passed into law was put and carried.

THE TRAVANCORE INSURANCE BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: I beg to present the report of the Select Committee on the Travancore Insurance Bill and move that the Bill, as reported, be taken into consideration.

MR. C. V. CHANDRASEKHARAN: I second it.

The question that the Bill be taken into consideration was then put and carried.

Clauses 1 to 121.

The question that clauses 1 to 121 do stand part of the Bill was put and carried and the clauses were added to the Bill.

Schedules.

The question that the schedules do stand part of the Bill was put and carried and the schedules were added to the Bill.

Preamble and Title.

The question that the Preamble and Title do stand part of the Bill was put and carried and the Preamble and Title were added to the Bill.

THIRD READING OF THE TRAVANCORE INSURANCE BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: I beg to move that the Bill be passed.

MR. C. V. CHANDRASEKHARAN: I second it.

The question that the Bill be passed was put and carried.

THE TRAVANCORE TELEPHONE BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI Sir, I beg to present the report of the Select Committee on the Telephone Bill and move that the Bill as reported be taken into Consideration.

MR. C. V. CHANDRASEKHARAN ; I second it.

The question that the Bill be taken into consideration was then put and carried.

Clauses 1 to 31

The question that clauses 1 to 31 do stand part of the Bill was put and crrried and the clauses were added to the Bill.

Preamble and Title.

The question that the Preamble and Title do stand part of the Bill was put and carried and the Preamble and Title were added to the Bill.

THIRD READING OF THE TRAVANCORE TELEPHONE BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI : I beg to move that the Bill be passed.

MR. C. V. CHANDRASEKHARAN: I second it.

The question that the Bill be passed was put and carried.

NEGOTIABLE INSTRUMENTS ACT (AMENDMENT) BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI : I beg to present the report of the Select Committee on the Negotiable Instruments Act (Amendment) Bill and beg to move that the Bill, as reported, be taken into consideration.

MR. C. V. CHANDRASEKHARAN : I second it.

The question that the Bill be taken into consideration was put and carried.

Clauses 1 to 12.

The question that clauses 1 to 12 do stand part of the Bill was put and carried and the clauses were added to the Bill.

Preamble and Title.

The question that the Preamble and Title do stand part of the Bill was put and was carried and the Preamble and Title were added to the Bill.

THIRD READING OF THE NEGOTIABLE INSTRUMENTS ACT AMENDMENT BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: I beg to move that the Bill be passed.

MR. C. V. CHANDRASEKHARAN : I second it.

The question that the Bill be passed was put and carried.

THE TRAVANCORE SPECIFIC RELIEF BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: Before we pass on to the next Bill, I have no objection to accept the amendment moved by Mr. Joseph Vithayathil to clause 51.

Clause 51.

The question that clause 51, as amended, do stand part of the Bill was put and carried and the clause, as amended, was added to the Bill.

Clause 52.

The question that clause 52 do stand part of the Bill was put and carried and the clause was added to the Bill.

Schedule.

The question that the Schedule do stand part of the Bill was put and carried and the Schedule was added to the Bill.

Preamble and Title.

The question that the Preamble and Title do stand part of the Bill was put and carried and the Preamble and Title were added to the Bill.

THIRD READING OF THE TRAVANCORE SPECIFIC RELIEF BILL

MR. PUTHUPALLI S. KRISHNA PILLAI: I beg to move that the Bill as amended, be passed.

MR. C. V. CHANDRASEKHARAN : I second it.

The question was put and carried, and the Bill as amended, was passed.

THE TRAVANCORE EQUITABLE MORTGAGE BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI : I beg to present the report of the Select Committee on the Travancore Equitable Mortgage Bill and move that the Bill, as reported, be taken into consideration.

MR. C. V. CHANDRASEKHARAN . I second it.

MR. R. SIVARAMAN NAIR : Before proceeding I beg to submit that the amendments have only now been put into our hands and that we require some time to study them. Since it is only 5 minutes to 5 o' clock I submit that the amendments may be taken up tomorrow.

MR. J. B. A. PEREIRA : Sir, I rise to oppose the Bill.

PRESIDENT : The Honorable Member, Mr. Sivaraman Nair was saying that he has not had time to study the amendments which have now come in and he has asked that the matter might be taken up tomorrow. With the consent of the House it will be taken up tomorrow.

The House will now adjourn and meet at 11 O' clock tomorrow.

The Assembly adjourned at 4.48 P. M.

A. GUNAMONY,
Secretary to the Sri Mulam Assembly.

PROCEEDINGS
of
THE TRAVANCORE SRI MULAM ASSEMBLY

(*OFFICIAL REPORT*)
SECOND ASSEMBLY.

FOURTH SESSION

Saturday, the 24th June, 1939/10th Mithunam 1114.

The Assembly re-assembled in the Legislative Chamber at eleven of the clock, with the President in the Chair.

New Members.

The following official members took the oath and signed the rolls.

(1) Mr. G. B. E. Truscott.
(2) Mr. G. S. Abdul Karim Sahib.

QUESTIONS AND ANSWERS.

The Trivandrum-Nagercoil road.

83. * **MR. K. P. KOCHUKORA THARAKAN** (*Kunnatnad* cum *Parur*) : Will the Government be pleased to state :

(*a*) whether they propose to improve the Trivandrum-Nagercoil road by cementing it ; and

(*b*) if so, whether any steps have been taken in connection with it till now and, if so, what those steps are ?

MR. G. B. E. TRUSCOTT (*Chief ngineer*)

(*a*) Yes.

(*b*) The contract has been settled and the collection of metal is in progress.

MR. K. P. KOCHUKORA THARAKAN : ഈ റോഡ് അല്ലേ കുറ്റന്നായിട്ടുള്ളതു്?

MR. G. B. E. TRUSCOTT : Yes, Sir.

MR. M. SIVATHANU PILLAI (*Tovala* cum *Agastiswaram*) : May I know whether there is any interim arrangement made to repair the bad condition of the road?

MR. G. B. E. TRUSCOTT : Yes, Sir.

MR. C. JEBAMONY NADAR (*Kalkulam* cum *Vilavankod*) : May I know whether any portion of the road has been taken up for improvement?

MR. G. B. E. TRUSCOTT : Yes, Sir.

MR. C. JEBAMONY NADAR : May I know from Government when the road will be opened?

MR. G. B. E. TRUSCOTT : As soon as the work is finished it will be opened.

G. P. T. 2597--350.

MR. C. JEBAMONY NADAR: In how many months' time will the work be completed?

MR. G. B. E. TRUSCOTT: I hope the whole contract will be finished in 15 months' time.

MR. T. C. KESAVA PILLAI (*Kalkulam cum Vilavankod*): May I know the total amount collected for the last 40 years on that road?

MR. G. B. E. TRUSCOTT: That question does not arise. I would request the honourable member to put a fresh interpellation.

MR. T. C. KESAVA PILLAI: Was not the bad condition of the road brought to the notice of Government some years back and a suggestion made for its improvement as yearly as possible?

MR. G. B. E. TRUSCOTT: That might have been done.

MR. C. JEBAMONY NADAR: May I know from Government whether any private lands have been acquired by Government in this connection?

MR. G. B. E. TRUSCOTT: If such lands become necessary it is the duty of the department to bring it to the notice of Government for due action.

MR. M. SIVATHANU PILLAI: On a point of order. May I know whether honourable members who have asked supplementary questions once are permitted to put supplementary questions again on the same question?

PRESIDENT: I hope the honourable members are fully aware of the rules and also of the latitude allowed by the President in respect of the rules regarding the putting of supplementary questions. I trust that they will not be abused by the honourable members.

The bund in S. No. 1100/1 of the Chemmanad pakuthy, Kunnatnad taluk.

84 ✻ **MR. K. P. KOCHUKORA THARAKAN**: With regard to the bund in S. No. 1100/1 of the Chemmanad pakuthi, Kunnatnad taluk, and its lock, will the Government be pleased to state:

(*a*) whether the Irrigation Department has constructed a bund with a lock in S. No. 1100/1 of the Chemmanad pakuthy, Kunnatnad taluk;

(*b*) if so, the year in which it was constructed;

(*c*) whether any petition that certain damages were done to the bund and the lock in Dhanu 1100 was received about that time, by the authorities of the Department;

(*d*) if so, when and from whom it was received;

(*e*) if such an information was received, whether any departmental enquiry was made in the matter and, if so, the officer who made the enquiry and the date on which it was made;

(*f*) whether the police made any enquiry in regard to the damage to the bund and the lock, and filed any charge; if so, what was its result;

(*g*) whether they are aware that the owners of agricultural lands who were using water from the said lock for agricultural purposes had complained to the Executive Engineer, Alwaye, and that after his inspection of the place and under his instruction they have petitioned the Irrigation Assistant Engineer, Muvattupuzha, in the matter;

(*h*) whether as the result of the said petition the Irrigation Section Officer, Alwaye, went and inspected the said place, if so, whether he has reported that fact to his superior, and if so, the substance of his report :

(*i*) whether on his arrival at the place he advised the ryots to repair the said bund and lock, promising to make the Government pay the amount spent for the repairs and permitted them to make the repairs;

(*j*) whether the Irrigation Section Officer has made a report to the above effect to his superior, if so, its date ;

(*k*) whether they are aware that in accordance with the promise mentioned above, the ryots repaired and restored the bund and the lock to their original condition ;

(*l*) if the ryots have so repaired, whether any amount was paid to them on that account, if not, the reason therefor ;

(*m*) whether the Government are aware that notice has been served from the Chemmanad Pakuthy Cutcherry in Medom 1112 on the owners of properties comprised in S. Nos. 301/1-2, 302/1-2-3-4, 1018/1-2-3-5-9, 1095/1-10-11-12-16 of the Chemmanad pakuthi demanding water cess for taking water from bund No. 1100/1, while as a matter of fact these lands lie on a level higher than that of the lock, that these owners have no facilities for using the water in bund No. 1000/1 through the lock, that they have been and are using water from the Karapuzha chira of the said pakuthi for agricultural purposes and that the Irrigation Department has done no work there :

(*n*) whether the Government, the Land Revenue Commissioner, the Dewan Peishkar, the Tahsildar of the taluk, the Chief Engineer and the Irrigation Division Officer have received petitions complaining against the levy of water cess for water which as mentioned before, is of no use to them and which they have not actually used :

(*o*) if so, who all got such petitions , and

(*p*) whether any of them has taken any action in the matter, if so, the nature of the action taken by each and the stage at which the matter stands at present ?

MR. G. B. E. TRUSCOTT : (*a*) Yes.

(*b*) In 1934.

(*c*) Yes, in 1935.

(*d*) Two petitions from Kombana Moothedathu Vasudevan Nambudiripad and others were received by Division Officer, Irrigation, and Sub-Division Officer, Muvattupuzha Irrigation Sub-Division in January 1935.

(*e*) Yes. An enquiry was made by the Section Officer, Alwaye Irrigation Section on 15-1-1935.

(*f*) Yes. A case was registered and enquired into by the Police. It was charge-sheeted on 20-8-1110 before the Second Class Magistrat Alwaye, who acquitted the accused.

(*g*) Yes.

(*h*) Yes. The Section Officer, Alwaye, inspected the site on 29-5-1935 and reported to the Sub Division Officer that the ryots were doing the work at their own cost.

(*i*) No.

(*j*) No report except the one referred to in reply to item (*h*).

(*k*) The ryots repaired the bund.

(*l*) They were not paid for the work because they were bound to keep the bund in repair as per the Irrigation Act.

(*m*) Yes.

(*n*) and (*o*). Petitions were received by Government and Division Officer, Irrigation, Land Revenue Commissioner, Division Peishkar, Kottayam, and Tahsildar, Kunnatnad.

(*p*) Yes. Government have already ordered that the lands which are not benefited by the work are exempted from payment of half contribution.

Construction of a dam across thePeriyar.

85 * **MR. K. P. KOCHUKORA THARAKAN:** Will the Government be pleased to state:

(*a*) whether it has been brought to their notice through representations made in the Sri Mulam Popular Assembly and the Sri Mulam Assembly and through petitions that if a dam is constructed above the water fall at "Puthen Kettu", "Kiliyan's fall" and "Tadikompan" in Periyar and if water is diverted through channels, it could be used for cultivating many acres of land, that would be a source of profit to the Government and prosperity to the country and that therefore the matter should receive their attention;

(*b*) whether a scheme regarding this has been submitted to the Government by the Executive Engineer, Mr. John Kurien while he was at Alwaye;

(*c*) if so, whether they will be pleased to lay on the table a copy of that scheme;

(*d*) if this has been brought to their attention, whether any investigation in the matter has been made by them, and

(*e*) if so, the result of such investigation.

MR. G. B. E. TRUSCOTT: (*a*) to (*e*). As far as could be traced, no papers are available.

MR. K. P. KOCHUKORA THARAKAN: ഇങ്ങനെ ഒരു ഡാം ഉള്ളതായി ഗവർമ്മെൻറിനറിയാമോ?

MR. G. B. E. TRUSCOTT: It has already been answered that no papers are available to show that any proposal or investigation has been made.

MR. K. P. KOCHUKORA THARAKAN: അതിലെ വെള്ളം തിരിച്ചുവിട്ടാൽ അനേകം ഏക്കർ സ്ഥലം കൃഷിചെയ്യാൻ സാധിക്കുമെന്നു ഗവർമ്മെൻറിനറിയാമോ?

MR. G. B. E. TRUSCOTT: I am prepared to take the honourable member's statement in regard to that matter.

Bathing ghat at Vattakushi Periakulam.

86 ***MR. C. JEBAMONY NADAR** (*Kalkulam cum Vilavankod*): Will the Government be pleased to state:

(*a*) whether the public of Eechan villai and the suburbs have petitioned the authorities for the construction of a bathing ghat at Vartakushi Periakulam, survey No. 6122 of Agastisvaram Pakuthy, Agastisvaram Taluk;

(*b*) the date of such petition;

(*c*) whether any estimat has been prepared;

(*d*) whethor the Govern ent have sanctioned the estimate; and

(*e*) whether any work has been done till now?

MR. G. B. E. TRUSCOTT (*a*) Yes.

(*b*) 12-7-1114.

(*c*) Yes.

(*d*) Yes

(*e*) No.

Railway Station at Pallikkal.

87 ***MR. K. P. KOCHUKORA THARAKAN**: Will the Government be pleased to sta'e whether there is a waiting shed, for the convenience of passengers, in the Railway Station newly opened at Pallikkal, to the north of the Railway station at Kottarakarai; if not, the reason for not providing such a waiting shed?

MR. M. GOVINDA PILLAI (*Financial Secretary to Government*): *I Part.* Yes.

Proverthicars from certain communities.

88 ***MR. C. JEBAMONY NADAR**: Will the Government be pleased to state whether there are any Proverthicars from the following communities

(*a*) Hindu Nadars;

(*b*) S. I. U. C. Christians; and

(*c*) Latin Catholics?

MR. M. RAMACHANDRA RAO: (*Ag. Land Revenue and Income Tax Commissioner*): There is one Proverthicar from the S. I. U. C. Community alone.

MR. M. SIVATHANU PILLAI; May I know from the Government why no Hindu Nadar has been appointed as Proverthicar?

MR. M. RAMACHANDRA RAO: Probably there was no opportunity for that.

MR. M. SIVATHANU PILLAI: Am I to understand from the member that no application was received from among the members of that community?

MR. M. RAMACHANDRA RAO: It is for the Public Service Commissioner to answer that question.

MR. K. R. NARAYANAN (*Vaikom* cum *Kottayam*): എല്ലാ സമുദായത്തിലുള്ളവർക്കും പ്രാതിനിധ്യം ലഭിക്കത്തക്കവണ്ണം ഉദ്യോഗനിയമനം നടത്തണമെന്ന് കഴിഞ്ഞ ബഡ്ജറ്റുകാലത്തു പറഞ്ഞിട്ടുള്ളതായി അറിയാമോ?

MR. M. RAMACHANDRA RAO: എന്നാണു കാണുന്നതു്.

MR. K. R. NARAYANAN: ഇങ്ങനെ ഒരു സ്കീം ഗവൺമെന്റിന്റെ മുൻപിലുണ്ടോ?

MR. M. RAMACHANDRA RAO: ഉണ്ടു്.

MR. K. R. NARAYANAN: ആ സ്കീം എന്താണെന്നു പറയാമോ?

MR. M. RAMACHANDRA RAO: അതിനെപ്പറ്റി ഗവൺമെന്റുത്തരവുണ്ടായിട്ടുണ്ടു്.

Recruitment as Accountants in the Revenue Department.

89 *MR. K. P. KOCHUKORA THARAKAN: Will the Government be pleased to state:

(*a*) whether Syrian Catholics who have passed the Vernacular School Leaving Examination, Chain Survey and Village Officers' Test have applied to the Public Service Commissioner for recruitment as Accountants in the Revenue Department;

(*b*) if so, how many of them have been recruited as such till this date; and

(*c*) whether there are any among them who have not yet been given appointments; if so, the number of such persons?

MR. G. NARAYANAN TAMPI (*Secretary to Government*): (*a*) Yes.

(*b*) Three;

(*c*) Yes; four.

Opening of a Channel from Kannamangalom Tank.

90 *MR. K. NARAYANAPERUMAL NADAR (*Tovala* cum *Agastisvaram*): Will the Government be pleased to state whether there is a scheme to open a channel from Kannamangalam tank to feed Muttom and its suburbs with good water, and to irrigate nearly two hundred acres of land?

MR. G. B. E. TRUSCOTT: No.

Irrigation at Muttom and its suburbs.

91 *MR. K. NARAYANA PERUMAL NADAR: Will the Government be pleased to state whether there is a scheme to take water, by pipe line from Kannamangalam Oddi to feed Muttom and its suburbs?

MR G. B. E. TRUSCOTT: No.

South Ariad-Arattuvazhi Road.

92 * **MR. N. NARAYANA KURUP** (*Ambalapuzha* cum *Shertalai*): Will the Government be pleased to state:

(*a*) whether they have received representations from the people of Ariad North and South Pakuthies and the Public of Alleppey in the Ambalapuzha taluk, praying for the restoration, improvement and early construction of the 'South Ariad Arattuvazhi Road' in the Ambalapuzha taluk;

(*b*) if the answer to part (*a*) is in the affirmative, the action, if any, that has been taken on the representations;

(*c*) whether, the owners of lands required for the construction of the road, have consented to surrender necessary lands free of compensation;

(*d*) whether the P. W. D. has investigated and prepared any preliminary estimate for the road;

(*e*) if the answer to part (*d*) is in the affirmative, the estimated amount;

(*f*) the length of the road; and

(*g*) whether there are any public institutions alongside the road?

MR. G. B. E. TRUSCOTT (*a*) Yes.

(*b*) A preliminary investigation was made and a detailed report submitted to Government by the Chief Engineer, and Government have called for a detailed estimate for improving the road.

(*c*) Yes.

(*d*) Yes.

(*e*) Rs. 7,000 approximately.

(*f*) About one mile in length.

(*g*) Yes. A temple, a school and a mosque.

MR. N. NARAYANA KURUP (*Ambalapuzha* cum *Shertala*): In answer to part (*b*) of the question, may I know whether the detailed estimate has been sent up to Government?

MR. G. B. E. TRUSCOTT: No Sir.

MR. N. NARAYANA KURUP: May I know whether any land has been surrendered by private parties?

MR. G. B. E. TRUSCOTT: As far as my information goes I do not think any land has been surrendered.

Appointments in the Account Office.

93 * **MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state the number of direct appointments made by Government, in the intermediate division of the public service, in the Account Office in the scales of Rs. 25-40, 40-70 and 75-100 between 30-6-1113 and 30-6-1114?

MR. M. GOVINDA PILLAI (*Financial Secretary to Government*):

Rs.	75-100	1
„	40-70	nil
„	25-40	3
	Total	4

MR. P. SIVARAMA PILLAI (*Minachil cum Todupuzha*): May I know from Government whether there were any acting hands at the time of making those four appointments?

MR. M. GOVINDA PILLAI: Some acting hands were available at that time.

MR. P. SIVARAMA PILLAI: Then may I know why Government have not appointed them?

MR. M. GOVINDA PILLAI: Those appointments were directly made by Government on both personal and communal considerations.

MR. P. SIVARAMA PILLAI: May I know what those considerations are?

MR. M. GOVINDA PILLAI: In regard to communal consideration, I submit that representatives from inadequately represented communities were appointed in those vacancies and personal considerations are considerations which relates to retired officers. It is the avowed policy of Government to encourage in every way possible the interests of officers who have rendered faithful, loyal and honest service.

MR. P. SIVARAMA PILLAI: May I know from the member whether one of the persons appointed is the relation of a retired officer?

MR. M. GOVINDA PILLAI: Yes.

MR. M. SIVATHANU PILLAI: May I know whether there is any difference in the services rendered by officers in general?

MR. M. GOVINDA PILLAI: A differentiation is quite possible.

Lady clerks in the Account Office.

94 ***MR. K. P. KOCHUKORA THARAKAN**: Will the Government be pleased to lay on the table a statement, by caste, of the lady clerks appointed before the 30th Meenam 1114, in the Account Office?

MR. M. GOVINDA PILLAI: The statement required by the member is furnished below:

Nairs	2	P. Parukutty Amma Rugmani Amma
Other Hindus	2	Lekshmikutty Ammini Amma
Ezhavas	3	V. Gourikutty V. Madhavi P. Ponnamma
S. I. U. C.	1	Mary Joyanna Daniel.

MR. K. P. KOCHUKORA THARAKAN: ഈ നിയമനം പബ്ളിക്ക് സർവീസ് കമ്മീഷണരെ നിയമിച്ചതിനു ശേഷമാണോ അതല്ല മുൻപാണോ നടത്തിയിട്ടുള്ളതു്?

MR. M. GOVINDA PILLAI: These appointments were made long before the Public Service Commissioner was appointed.

MR. K. P. KOCHUKORA THARAKAN: ജാക്കബൈററു സമുദായത്തിൽനിന്നും ആരെയും നിയമിച്ചു കാണുന്നില്ല. അതു് അവരിൽനിന്നും അപേക്ഷകന്മാരാരും ഇല്ലാത്തതുകൊണ്ടാണോ?

MR. M. GOVINDA PILLAI: At the time those appointments were made there were presumably no applicants from that community.

Maintenance charges to the M. C. and M. S. Roads.

95. ***MR. D. FRANCIS** (*Kalkulam* cum *Vilavankod*): Will the Government be pleased to lay on the table a statement showing the average amount per mile spent during the year 1113 for maintaining the M. S. road and M. C. road from Aramboly to Parur in the Nagercoil, Trivandrum, Quilon, Kottayam and Alwaye Divisions?

MR. G. B. E. TRUSCOTT: *A statement is laid on the table.

Construction of a road to connect Kottar—Dharmapuram road.

96. ***MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state:

(a) whether they have surrendered certain portions of lands comprised in Dharmapuram and Neendakara B Division Pakuthies (Agastiswaram taluk) to the Public Works Department, for the construction of a road to connect Kottar-Dharmapuram road with Rajakamangalam-Beach Road;

(b) when was the land acquisition moved by the P. W. Department; and

(c) if the answer to part (a) is in the negative, the reasons therefor?

MR. G. B. E. TRUSCOTT:

(a) No. Government have sanctioned the acquisition of the necessary lands.

(b) In 1932.

(c) This does not arise in view of reply to part (a).

Clerks in the Land Revenue Department.

97. ***MR. KOTTALIL P. ABRAHAM** (*Muvattupuzha* cum *Devicolam*): Will the Government be pleased to state:

(a) whether there is a rule in the Land Revenue Department saying that the clerks and peons in mofussil stations should not be allowed to continue in the same stations for more than 5 years; and

(b) whether such rules are in force and in working order at present?

MR. M. RAMACHANDRA RAO:

(a) No.

(b) The question does not arise in view of the answer to part (a).

**Vide* Appendix I. page

Lady clerks in the Office of the Land Revenue Commissioner.

98. *MR. K. P. KOCHUKORA THARAKAN: Will the Government be pleased to lay on the table a statement, by caste, of the lady clerks appointed before 30th Meenam 1114, in the Office of the Land Revenue Commissioner?

MR. M. RAMACHANDRA RAO:

The *statement required is laid on the table.

Gravelling the Chattikulangara-Karipuzha road.

99. *MR. P. NARAYANA PILLAI (*Mavelikara cum Kunnattur*): Will the Government be pleased to state:

(*a*) whether they have received any representations by the people of Kannamangalom for gravelling the Chattikulangara-Karipuzha road through Kannamangalam in Mavelikara taluk; and

(*b*) whether any steps have been taken for the gravelling of that road?

MR. G. B. E. TRUSCOTT:

(*a*) Yes.

(*b*) No. Further steps can be taken only after the earth work is completed, the curves eased and the required lands surrendered free of cost, by the ryots.

Deputy Tahsildar, Vilavankod.

100. *MR. C. JEBAMONY NADAR: Will the Government be pleased to state:

(*a*) whether the present Deputy Tahsildar, Vilavankod is a native of that taluk;

(*b*) the posts which he has been holding in that taluk cutcherry, with the dates thereof; and

(*c*) if he was transferred from that office on any occasion, the reasons for each transfer and the dates of such transfer?

MR. M. RAMACHANDRA RAO: (*a*) Mr. K. Madhavan Pillai, Deputy Tahsildar, Vilavankod taluk, since transferred to the Karthigapally taluk, is a native of the former taluk.

(*b*) and (*c*) A †statement containing the information required is laid on the table

Punja Cultivation in North Travancore.

101. *MR. S. NARAYANA PILLAI (*Quilon cum Kottarakara*): Will the Government be pleased to state:

(*a*) whether the *Punja* cultivation in North Travancore recently is a failure;

(*b*) whether they have instituted enquiries why *Punja* cultivation fails:

(*c*) whether the silting up of irrigation canals is one of the reasons for such failure;

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*Vide Appendix II. page

† *Vide* Appendix III page

(*d*) whether any arrangements have been made to remove the silts from river beds and water courses by dredging; and

(*e*) whether there is any arrangement by which the work of the Irrigation and the Agricultural Departments are co-ordinated?

MR. G. B. E. TRUSCOTT: (*a*) Not as a whole but only in a few localities.

(*b*) No special enquiries have been instituted.

(*c*) Yes.

(*d*) Yes; when the ryots have prayed for as per Irrigation rules.

(*e*) No; but each department contributes its own share by affording facilities and instructions for the betterment of cultivation.

Amalgamation of the Maramat with the P. W. Department.

102. ***MR. PULIYOOR T. P. VELAYUDHAN PILLAI** (*Tiruvalla*): Will the Government be pleased to state the amount of actual saving made in the year 1113, in salary and allowance of officers and establishment on account of the amalgamation of the Maramat Department with the P. W. D.?

MR. G. B. E. TRUSCOTT: The amount of actual saving made in the year 1113, in salary and allowances of officers and establishment on account of the amalgamation of the Maramat Department with the P. W. D. is Rs. 16,770 as per statement below:

		Expenditure.	
		1112.	1113
		Rs.	Rs.
Salaries	...	16,234	1,280
Establishment	...	28,967	27,421
Allowances	...	6,013	3,491
Contingencies	...	3,780	6,032
Total	...	54,994	38,224

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from Government whether they are aware of representations made during the last Budget Session regarding the re-establishment of the Maramat Department as an independent one?

MR. G. B. E. TRUSCOTT: Yes, Sir.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know whether the Government have taken any definite action in respect of that?

MR. G. B. E. TRUSCOTT: No, Sir. But I may say that the re-constituted Maramat Department has been working very satisfactorily.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know whether the Government have considered those representations and come to any final decision?

MR. G. B. E. TRUSCOTT: No, Sir.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know from Government the exclusive function of the Maramat Department before it was amalgamated?

MR. G. B. E. TRUSCOTT: Looking after Maramat work.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know who is supervising the work of repairs etc, to temples?

MR. G. B. E. TRUSCOTT: The Division Officers in charge of respective divisions are attending to repair work. Formerly the Maramat Department was supervised by one Executive Engineer. Now there are five Executive Engineers with their respective Sub-Division Officers for supervising the work of the Maramat Department. It is the opinion of the Government that the work now done is quite satisfactory.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Before the amalgamation of the Maramat Department was not only one officer attending to the work of supervision of the Department?

MR. G. B. E. TRUSCOTT: Yes, Sir.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know whether there are Executive Engineers and their assistants who are not permitted to enter into temples for attending to repair work?

MR. G. B. E. TRUSCOTT: Yes, Sir. In such cases other arrangements are made for looking after repair work.

MR. T. C. KESAVA PILLAI: Is it not a fact that check measurements in respect of works involving an estimate of 2 lakhs and over were not allowed by the Division Officers of the respective jurisdiction?

MR. G. B. E. TRUSCOTT: No, Sir. In such cases, the work will be undertaken by responsible Division Officers.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know the amount that was surrendered last year out of the budget allotment in respect of this Department?

MR. G. B. E. TRUSCOTT: I claim notice.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know the method by which supervision work is carried out when the Division Officers are out of station?

MR. G. B. E. TRUSCOTT: The Division Officer will supervise the work and in his absence the Sub-Division Officers under him will attend to supervision work.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Is it the opinion of the Chief Engineer that the supervision work carried on by the Sub-Division Officers will be quite satisfactory?

MR. G. B. E. TRUSCOTT: Yes, Sir.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know the reason for the increase in the amount of contingencies in 1113 for the Maramat Department?

MR. G. B. E. TRUSCOTT : I claim notice.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : An answer is furnished to that question and therefore may I know whether the Chief Engineer was right in claiming notice ?

PRESIDENT : The Chief Engineer may not have sufficient information to answer this specific question.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : My definite question is what was the reason for such increase in contingencies in 1113 ?

MR. G. B. E. TRUSCOTT : I have not got sufficient information to satisfactorily answer that question and therefore I claim notice.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : May I know whether as a result of amalgamation, one Executive Engineer had to be declared supernumerary Executive Engineer ?

MR. G. B. E. TRUSCOTT : Yes. That was only for the time being until he was absorbed in the next vacancy.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : What was the amount of salary drawn by him during that year ?

MR. G. B. E. TRUSCOTT ; I claim notice.

Pension of Mr. Changanachery K. Parameswaran Pillai.

103. *** MR. K. NARAYANAPERUMAL NADAR :** Will the Government be pleased to state whether it is a fact that the pension given to Mr. Changanachery K. Parameswaran Pillai, a retired High Court Judge, is stopped ?

MR. M. GOVINDA PILLAI : The pension in question has been withheld.

MR. K. NARAYANAPERUMAL NADAR : May I know from Government why his pension was withheld ?

MR. M. GOVINDA PILLAI : The answer will be apparent from the correspondence that has already been placed on the Secretary's table. But for the purpose of further elucidation I may say that it was withheld on the ground that he was regarded as guilty of grave misconduct.

MR. K. NARAYANAPERUMAL NADAR : May I know the nature of the misconduct ?

MR. M. GOVINDA PILLAI : Sir, Government considered it a grave misconduct on the part of the pensioner to associate himself with a movement which has been and is unconstitutional in its activities and which is carried on in a manner which has a tendency to subvert the peace and good order of society advocating civil disobedience and similar movements.

MR. K. NARAYANAPERUMAL NADAR : May I know the nature of the crime he has committed ?

MR. M. GOVINDA PILLAI : I did not use the word "crime". I said that he was guilty of grave misconduct.

MR. K. NARAYANAPERUMAL NADAR: Then may I know the nature of the misconduct he has done?

MR. M. GOVINDA PILLAI: I have already explained that.

MR. K. NARAYANAPERUMAL NADAR: Is it for the executive to say that he has committed sedition through his utterances?

PRESIDENT: Does the honourable member suggest that the executive Government should not have adopted comparatively mild methods but that he should be prosecuted if the Government were advised that his utterances were seditious?

MR. C. JEBAMONY NADAR: May I know from the honourable member the relevant rule for withholding pension to an officer of Government?

MR. M. GOVINDA PILLAI: I shall read the relevant portion of the Travancore Civil Service Regulations. It is governed by Article 224. It reads thus:—

> "Future good conduct is an implied condition of every grant of pension. The Government reserves to itself the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct."

MR. C. JEBAMONY NADAR: Do the Government expect that the officers will be aware of these rules at the time of appointment?

MR. M. GOVINDA PILLAI: Certainly. Every officer is expected to know the rules of the service.

MR. C. JEBAMONY NADAR: If they are not aware of that, do the Government take it as a misconduct or inefficiency on their part?

MR. M. GOVINDA PILLAI: Ignorance of rules is not by itself considered as misconduct.

MR. M. SIVATHANU PILLAI: May I know whether the Government are aware that Mr. Changanacherry Parameswaran Pillai has in the course of his statement said that he was not aware of the rule referred to in the T. S. R.?

MR. M. GOVINDA PILLAI: I do not remember that he pleaded ignorance of the provision that I read just a while ago.

MR. M. SIVATHANU PILLAI: May I know whether he did not make a definite statement to that effect?

MR. M. GOVINDA PILLAI: I do not remember to have seen such a definite statement.

MR. M. SIVATHANU PILLAI: May I know whether the Government do not send a copy of the Service Regulation to their officers at the time of appointment?

MR. M. GOVINDA PILLAI: These officers are entitled to a copy of the Service Regulation and Mr. Changanacherry Parameswaran Pillai did enjoy that privilege.

MR. M. SIVATHANU PILLAI: May I know whether Mr. Changanacherry Parameswaran Pillai is a retired Judge of the High Court?

MR. M. GOVINDA PILLAI: Yes, Sir.

MR. M. SIVATHANU PILLAI: Then how does the Government reconcile the statement issued by him that he was not aware of any such rule in the Service Regulation?

PRESIDENT: I presume that the honourable members are aware of the existence of the Legislative Assembly Manual which contains rules relating to and binding on the members of this House; similarly every officer ought to know what the Government rules are in respect of his tenure as Government servant.

MR. M. SIVATHANU PILLAI: In view of that, may I know whether the Government will bestow their serious attention when the future recruitment to High Court Judges take place and see that their officers are aware of the Service Regulation at the time of their appointment as Judges?

MR. M. GOVINDA PILLAI: In this connection I may read one relevant sentence from Mr. Parameswaran Pillai's own statement:

> "As regards my pension I know it is not a statutory one and its continuance depends upon the sweet will and pleasure of Government."

From such a statement it could be gathered that he has had a full knowledge of the implications of the rules on the subject.

MR. C. JEBAMONY NADAR: Is the grant of pension according to the sweet will of Government?

MR. M. GOVINDA PILLAI: It is not statutory. The statement issued by a former Judge of the High Court may in this point be relied upon.

PRESIDENT: Does the Financial Secretary maintain the soundness of the legal position in this matter?

MR. M. GOVINDA PILLAI: No, Sir.

MR. P. SIVARAMA PILLAI: Since the statement is placed on the table of the Secretary to the Assembly there is some difficulty for some of the members on this side to study the question and then put supplementary questions. Under the circumstances will the honourable member be pleased to read that correspondence?

PRESIDENT: Order order. The correspondence consists of four or five letters and it was considered an unnecessary waste of money to print that correspondence and distribute it to all the honourable members of the House and therefore that correspondence is placed on the table of the Secretary. If honourable members want to consult the correspondence they may do so, but if the honourable members want the Financial Secretary to read the correspondence or give a summary of the correspondence, I shall allow him the latitude to do so. Mr. Financial Secretary, you may give a summary of the correspondence.

MR. M. GOVINDA PILLAI: Sir, the first letter from the Government was an enquiry as to whether he was a member of the State Congress. In reply he stated that he was, but at the same time he raised the question of the propriety of the Chief Secretary to Government in having addressed a letter of that kind to him, because he presumed that as Judges of the High Court enjoyed the privilege of communications addressed to them proceeding from the Dewan, the Dewan should have written to him.

PRESIDENT: Of course at the time of the correspondence he was not a High Court Judge but had retired. He must have overlooked this circumstance.

MR. M. GOVINDA PILLAI: That aspect too has been pointed out in the reply from Government. Subsequently his attention was invited to his active participation in some of the seditious movements and to some of his objectionable utterances and he was told that Government, should he persit, in his line of action would be painfully constrained to withhold his pension. To that he sent a reply in which he said that he became a member of the State Congress after he thought that it had ceased to be disloyal. He said.—

> "I am sorry it is difficult for me to understand you when you say that the State Congress is "an organisation which in the opinion of the Government has been indulging in seditious propaganda and is subversive of authority and injurious to the interests of the State." Whatever may have been the opinion of Government in regard to the activities of the State Congress at one time, when they suspended the notification under the Criminal Law Amendment Act declaring the State Congress an unlawful association, the Government must be deemed to have withdrawn these charges against the State Congress and recognised it as a perfectly legal body."

Government, however, watched with interest and care his movements, his utterances and his writings in the Press and Government felt that the time had come to issue to him a final warning and they also informed him that they were compelled to withhold his pension. In reply to that he said that he knew that the pension was not a statutory grant and that it depended upon the sweet will and pleasure of Government. But at the same time he said that he was only exercising his rights and privileges as a citizen of the State.

MR. P. SIVARAMA PILLAI: If his utterances were seditious, is he not liable to be prosecuted?

MR. M. GOVINDA PILLAI: He is certainly liable to be prosecuted.

MR. M. SIVATHANU PILLAI: Do Government propose.........

PRESIDENT: The intentions of Government are not proper subjects of interpellation.

MR. M. SIVATHANU PILLAI: Is there any instance of any other officer having been dealt with like that?

MR. M. GOVINDA PILLAI: Well Sir, not so far.

MR. T. C. KESAVA PILLAI: May I know from Government whether there are other pensioned officers on whom Government are having an eye?

MR. M. GOVINDA PILLAI: Sir, if Government are convinced that the conduct of other pensioned officers requires watching, they will do so.

MR. T. C. KESAVA PILLAI: May I know whether Government are going to watch their movements hereafter with the help of the Inspector-General?

MR. M. GOVINDA PILLAI: Government do not always require the assistance of the Inspector-General. They are always vigilant in watching the conduct of their pensioned officers, as well as others in the State.

Pension of Mr. Changanachery K. Parameswaran Pillai.

104. ***MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state:—

(*a*) whether notice was given by the Government to Mr. Changanachery Parameswaran Pillai (Retired High Court Judge) asking to show cause why his pension should not be stopped;

(*b*) whether he made any reply to the Government; and

(*c*) if answers to (*a*) and (*b*) are affirmative, will the Government be pleased to lay on the table, a copy of the reply made by Mr. Changanachery Parameswaran Pillai?

MR. M. GOVINDA PILLAI: (*a*) Yes.

(*b*) Yes.

(*c*) Yes. Copies of the entire correspondence are placed on the Secretary's table.

MR. K. NARAYANAPERUMAL NADAR: May I know the date of issue of notice to Mr. Changanachery Parameswaran Pillai?

MR. M. GOVINDA PILLAI: Sir, the first notice was dated 17th May 1939.

MR. K. NARAYANAPERUMAL NADAR: May I know the date of his reply?

MR. M. GOVINDA PILLAI: The correspondence is placed on the table. It is dated 8th Idavom 1114.

MR. K. NARAYANAPERUMAL NADAR: From the last part of his reply may I know whether it is not clear that sufficient opportunity was not given to Mr. Pillai to explain?

MR. M. GOVINDA PILLAI: Well, Sir, he had sufficient time. He knew what he was about and Government do not believe that he was dealt with unfairly.

MR. K. NARAYANAPERUMAL NADAR: May I know whether he made a request to Government to revise their final order?

MR. M. GOVINDA PILLAI: There was no such request.

MR. K. NARAYANAPERUMAL NADAR: May I know whether Government intend to revise the final order?

PRESIDENT: Order, order. The intentions of Government are not subjects of interpellations.

Appendix I.

Vide **Answer to Question No. 95.**

Maintenance charges to the M. C. and M. S. Roads.

	Average amount per mile spent during 1113 on M. S. road.	Average amount per mile spent during 1113 on M. C. road.
	Rs.	Rs.
Nagercoil Division ...	1,283-6-0	...
Trivandrum Division ...	1,602-26-0	444-10-0
Quilon Division ...	...	448-0-0
Kottayam Division ...	...	490-22-0
Alwaye Division ...	...	399-12-0

Appendix II.

Vide **Answer to Question No. 98.**

Caste-war statement of lady clerks entertained in the office of the Land Revenue Commissioner before 30th Meenam 1114.

A.	*Hindu.*	
	1. Brahmin	,,
	2. Nayar	1
	3. Other caste Hindu	,,
	4. Kammala	,,
	5. Nadar	,,
	6. Ezhava	2
	7. Cheramar	,,
	8. Other Hindu	,,
B.	*Muslim.*	,,
C.	*Christian.*	
	1. Jacobite	,,
	2. Marthomite	1
	3. Syriac Catholic	,,
	4. Latin Catholic	,,
	5. South India United Church	,,
	6. Other Christian	,,
	Total	4

At present there are 2 lady clerks. One a Nair and the other a Marthomite.

Appendix III.

Vide Answer to question No. 100.

Statement showing the postings, transfers, etc., of the Deputy Tahsildar, Vilavankod.

Posts held.	Period of such service.	Date of transfer.	Reason for the transfer.
Clerk ...	2-9-1088 to 22-5-1089	22-5-1089	General transfer.
Ag. Head clerk ...	7-8-1098 to 21-5-1101	21-5-1101	Reversion on return of permanent incumbent.
Head clerk ...	1-6-1103 to 19-2-1105	19-2-1105	No information available as to the reason for transfer.
Do. ...	13-2-1105 to 19-8-1107	19-8-1107	Change of designation.
Head Accountant ...	20-8-1107 to 3-11-1108	3-11-1108	As a result of complaints.
Additional Jenmikaram Settlement Officer...	1-2-1109 to 24-8-1110	24-8-1110	Reversion on the termination of appointment.
Head Accountant ...	5-11-1110 to 1-7-1112	1-7-1112	Posting as Deputy Tahsildar in the same taluk.
Deputy Tahsildar ...	2-7-1112	27-6-1114	Transfer to the Karthigapalli taluk.

PRESIDENT: Order, order. It is likely that the official business might be finished in the course of to-day. I should like to take the opinion of the House as to whether they would have any objection to advance the non-official day to Monday. As no one seems to have any objection, the non-official day is advanced to Monday. In that case, the ballotting of resolutions originally fixed to take place on Monday will be held to-day. The election of three members to the Committee announced yesterday will take place after the regular business of the Assembly is over. That election will be by and from amongst the non-official members of the Assembly. In regard to the number of members to be elected to various Select Committees and the handing over the list of the names of members to the Secretary there has been some laxity. Also the numbers have been very large. I hope honourable members who are in charge of the task of announcing the names of the members to the Select Committees will keep that in mind, because we now find unmanageably large numbers on Select Committees.

MR. KAINIKKARA M. PADMANABHA PILLAI: When will the elections take place to-day?

PRESIDENT: Immediately after the business of the day is over.

MR. K. P. KOCHUKORA THARAKAN: ഇങ്ങിനെ ആയാൽ റസല്യൂഷൻ മൂവ് ചെയ്യാൻ സാധിക്കുമെന്നു തോന്നുന്നില്ല. അതുകൊണ്ട് അതിലേയ്ക്കു് ഒരു ദിവസം വച്ചാൽ കൊള്ളാം.

PRESIDENT: Is it expected that the Child Marriage Bill will take all the time on Monday?

MR. KAINIKKARA M. PADMANABHA PILLAI: Judging from past experience, it might take perhaps more than a day.

PRESIDENT: I am fully aware that the non-official resolutions have got some claims on Government and therefore after seeing how the Child Marriage Bill gets along on Monday—I find that it is likely to take up the whole day—I am perfectly willing, subject to what the honourable House may say, to extend the non-official business by a day. But I do hope that the Child Marriage Bill will be expeditiously dealt with.

LEGISLATIVE BUSINESS.

THE TRAVANCORE EQUITABLE MORTGAGE BILL—(*contd.*)

PRESIDENT: The motion before tha House is that the Equitable Mortgage Bill may be taken into consideration.

MR. J. E. A. PEREIRA (*Commerce and Industry, South*): Sir, I beg to move for the recommittal of the Bill. I do so with a full sense of responsibility. In the first place, it may seem strange that a business-man like myself should suggest this. As a person engaged in business

for the last many years, I believe that it will be conceded that I am entitled to have some say in the matter. This is a piece of Legislation which is suitable to places where commerce has been highly organised Under such conditions this Bill will be thrice welcome. The question is, how does it fit in with the prevailing conditions in Travancore? It is no argument to say that simply because the Bill obtains currency elsewhere it should be imported wholesale in as much as what is meat for one person may be poison for another. On the reading of the Bill, one is likely to make a wrong approach with the false premise that when two parties in commerce first meet, it is essential to have a security in the form of mortgage for establishing credit. As a matter of fact, this is not so. Let me illustrate it. Credit is essential for the trade and trade runs on credit. Let me explain the mechanism of credit. Suppose a retail dealer who owns Rs. 20,000 worth of property approaches a wholesale dealer and asks for credit for Rs. 2,000 and if the wholesale dealer insists on a security the retail dealer will flee back in search of another party who will have better regard for him.

As long as such a retail dealer does not approach further parties for similar credits all goes well. Even when he approaches more than one creditor, things continue to go well until his business moves go wrong or he ventures beyond his means Then only the trouble starts.

When a shrewd creditor smells a state of matters, he can press for an equitable mortgage and if the debtor creates an equitable mortgage in favour of the creditor who presses him what happens to his other creditors? As matters stand at present, and if the debtor creates a registered mortgage, it is known to the other creditors, whereas if an equitable mortgage is made, the other creditors have no chance of knowing it and they will be placed in a sad plight and will be left in the lurch or a debtor himself may single out a credtior for favourable treatment. When this is done, what will be the fate of the other creditors? It will thus be seen that the need for mortgage does not arise in the beginning of the commercial career of a person but only at the subsequent stage when things go wrong. This is the most important point to be noted.

An hypothetical case of ideal use is as follows:—When a trader owning Rs. 20,003 worth of property owes to 5 or 6 parties Rs. 10,000 in all, feels that it is high time pulls up himself with a view to prevent further debt, goes to a bank and creates an equitable mortgage on his property for Rs. 10,000 settles all his 5 or 6 creditors, but in this world how many such ideal examples could be found? When man is in affluent circumstances, all goes well. The trouble starts when he gets into straitened circumstances. In normal conditions, one would not think of departing from the ideal. It is only when a man gets into straitened circumstances and out of sheer desperation, he is driven to do things which he would not think of doing under normal circumstances. I am reminded of the dictum of Carlyle when he said "on half the rations you will be as knavish as anybody else, so do not mistake potatoes for principles". Under such circumstances, ever so many

[Mr. J. E. A. Pereira.]

things are possible. I find that the Select Committee has made a suggestion which was not favoured by the majority. The mistake is that they have suggested a remedy that takes away the wholesome provision of the Equitable Mortgage Bill viz, secrecy and speediness when the suggestion contained swearing in before Stipendiary Magistrate, etc. Speaking about the Select Committee I must say that the Legal Remembrancer has got the knack of avoiding most suitable elements from various committees.

PRESIDENT: Order, order. The honourable member need not sit in judgment, post mortem.

MR. J. E. A. PEREIRA: I am sorry, Sir and I withdraw my remarks.

As I was saying, the remedy suggested by the Select Committee eats away the wholesome provisions in the Bill. I also find that none of the amendments proposed in the Bill is satisfactory when analysed in the light of my remarks. Of all the amendments the one I like best is that of Mr. Jebamony Nadar but even that does not satisfy the case where a debtor singles out for favourable treatment one creditor alone.

Coming to the title, Sir, the ownership of land under the Nayar tarward is such a complicated matter that it would not be possible even for an unrivalled eminent jurist as my respected friend, Mr. E Subramonia Aiyar to say that Title in majority of the cases is A1 and unassailable. When such is the conditions, what guarantee is there that the Title under the equitable mortgage is perfect? By the time you take to ascertain this, all the secrecy will be lost and you might as well get a written registered mortgage.

MR. T. C. KESAVA PILLAI: I question the validity of his statement.

MR. J. E. A. PEREIRA: I don't yield in, Sir. I am in possession of the floor. I am prepared to answer him in the end.

Looking at this stand-point of view of Title, the bill is unsatisfactory and I am tempted to move for the total rejection but I would rather prefer for a recommittal to a Select Committee consisting of seasoned business persons like Mr. S. Krishna Aiyar, Mr. Karayalar and others, so that all aspects may be threshed out.

MR. T. C. KESAVA PILLAI: On a point of order, the observations made by the honourable member regarding the conduct of members especially the Legal Remembrancer is objectionable and I pray that he should be asked to withdraw his statement.

PRESIDENT: It is not a point of order. The honourable member's point apparently is that if a man of the type he has indicated sat on the Bill, a more business-like Bill will be forthcoming but it is possible to deal with the matter without singling out names which would be embarassing to those and to others not in the list.

MR. J. E. A. PEREIRA: I beg to be excused. Nothing was farther from my mind than to cast the least kind of reflection on any honourable member of this House.

All considered, the Bill as it stands now does not fit in with existing conditions and I move for the re-committal of the Bill to a fresh select committee.

MR N. RAMAKRISHNA PILLAI (*Vaikam cum Kottayam*): I second it.

MR. PUTHUPALLY S. KRISHNA PILLAI: (*Legal Remembrancer to Government*): The motion must be one according to Standing Order No. 41. It must be made more specific so that I may be in a position to reply.

PRESIDENT: In other words you want to know whether it is to be recommitted to the same Committee or to another Committee.

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes, Sir.

MR. J. E. A. PEREIRA: Sir, I could not follow.

PRESIDENT: Is it the intention of the honourable member in moving this amendment that the Bill be recommitted to the same Select Committee or to a Select Committee composed of other individuals?

MR. J. E. A. PEREIRA: I leave it to your discretion, Sir.

PRESIDENT: No, no. A motion has to be made.

MR. J. E. A. PEREIRA: To a fresh committee.

MR. PUTHUPALLY S. KRISHNA PILLAI: Government have no objection to the recommittal of the Bill to that Committee or to any other Committee. They would keep neutral in that matter. The decision is left to the House.

PRESIDENT: As the Legal Remembrancer has just now stated Government have no objection to have the matter further considered. That the bringing into existance of this system of equitable mortgage is, no doubt, an experiment and that there are many difficulties attendant on the experiment on account of the number of tenures and the complicated nature of the tenures in this country goes without saying. The reason underlying this project of legislation was to facilitate commercial transactions. The honourable member Mr. Pereira who spoke just now took one case. Let me think of another case. A certain person has dealings with a commercial personage or a banker. He goes on drawing funds for a particular business or venture of his. So long as the borrower is satisfied that the person is in a completely solvent position and able to repay the amount borrowed without difficulty, he may allow such borrowing. But a time may come when he may say, "I am not willing to lend to you any more. You have got a factory You want to extend it. I am not going to give you Rs. 1,000 or

[President.]

Rs. 10,000 more to extend the factory unless you put the factory in equitable mortgage with me. Very often it happens in commercial transactions that the very fact that he enters into a registered mortgage itself is considered a proof of the shaky financial position of the venture. In England and in the Presidency towns of Madras, Bombay, Calcutta, Karachi and certain other places it has been considered expedient to bring into existence legislation whereby you may legalise the transactions either for a temporary overdraft or for an advance without elaborate formality and undue publicity. An arrangement of that kind is called an equitable mortgage. But that involves two assumptions. Generally, in Europe and in the Indian Presidency towns, the possession of title deeds is regarded as important. Therefore if a person wants to borrow money he goes to the creditor and shows him the title deed and if the original title deeds are not forthcoming and are not considered satisfactory the loan is not generally granted. It may be that in certain systems the idea of title deeds have not evolved to that extent and the importance of title deeds may not be recognised and their possession may not be regarded. Similarly in England, until lately there was no system of registration at all. All that counted was the title deed. If there was an original muniment of title, its handing over was equivalent to the creation of a mortgage which was recognised under certain conditions by the Courts of equity. The system depends for its efficacy and convenience on the system of possession and transfer of title deeds. It may be that honourable members may think that there are special difficulties attendant on the scrutiny of such deeds here or the title may not depend on such deeds or there may be other local difficulties. If the House wants further time and it is suggested that the consideration of this Bill should be postponed there can be no objection. But at the same time it must be remembered that this system where it has been worked has been of the greatest value to commercial men in the matter of immediate advances. The question is whether we want such transactions, whether any special safeguards are needed having regard to the special circumstances obtaining in Travancore. If the honourable members are of the opinion that more time should be devoted to the Bill and that it should be considered by this Committee or a fresh Committee the matter will be left entirely to the discretion of this honourable House.

The motion before the House is that this Bill be recommitted to a fresh Select Committee. It has been duly proposed and seconded.

(The motion was put and carried.)

The honourable member will propose the members of the Committee.

MR. J. E. A. PEREIRA: I propose the following members:—

1. Mr. S. Krishna Iyer,
2. ,, S. Chattanatha Karayalar,
3. ,, K. C. Karunakaran,
4. ,, K. P. Kochukora Tharakan,
5. ,, Kainikara M. Padmanabha Pillai,
6. ,, K. G. Kunjukrishna Pillai,
7. ,, Puthupally S. Krishna Pillai,
8. ,, E. Subramonia Aiyar, and
9. ,, J. E. A. Pereira.

MR. T. C. KESAVA PILLAI: I propose the name of Mr. M. Sivathanu Pillai.

PRESIDENT: The motion before the House is that the names of the honourable members which have been announced should be accepted as members of this new Committee.

The motion was put and carried, and the Bill recommitted to a Select Committee consisting of the following gentlemen:

1. Mr. S. Krishna Iyer,
2. ,, S. Chattanatha Karayalar,
3. ,, K. C. Karunakaran,
4. ,, K. P. Kochukora Tharakan,
5. ,, Kainikara M. Padmanabha Pillai,
6. ,, K. G. Kunjukrishna Pillai,
7. ,, Puthupally S. Krishna Pillai,
8. ,, E. Subramonia Aiyar,
9. ,, M. Sivathanu Pillai, and
10. ,, J. E. A. Pereira.

RULES UNDER THE CIVIL PROCEDURE CODE.

MR. PUTHUPALLI S. KRISHNA PILLAI: This House has now to take up the proposal to amend the rules under the Civil Procedure Code. Last time when this House met the motion was made that the rules as reported by the High Court and published in the Government Gazette be taken into consideration. The motion was adopted but at the request of some members the consideration of that matter was postponed. We have to resume the consideration.

Orders I to III.

PRESIDENT: The question before the House is that in the rules under the Civil Procedure Code Orders 1 to 3—

MR. PUTHUPALLI S. KRISHNA PILLAI: No proposal has been made to alter Orders 1 to 3.

Order IV.

PRESIDENT: That is what I was going to say. The question is that Order 4 Rule 1 do stand part of the Rules.

MR. P. NARAYANA PILLAI (*Mavelikara cum Kunnattur*): I move that in Order IV, Rule 1, delete sub-rule (1). I think that the amendment brought by the Legal Remembrancer is quite un-necessary. This

[Mr. P. Narayana Pillai.]

amendment is suggested to avoid the delay in the disposal of cases. It is well-known that in the large majority of civil suits the plaintiffs are sure to get a decree and under such circumstances it is wrong to hold that they will intentionally withhold copies of plaints and thereby court unnecessary expenses and hardship to themselves. Moreover, it is also well known that in the majority of cases, copies of plaints are filed along with the suits. But in certain cases where copies are not filed, it may be due to unavoidable circumstances and in that case the parties deserve some concession. There are certain cases in which a number of defendants will have to be impleaded and in such cases it is not possible to prepare all the copies of the plaint within a day or two. The Legal Remembrancer may argue that the parties should prepare those copies sufficiently early. The litigant public are averse to enter into litigation unless they are forced to do so. They may be expecting some sort of settlement between the parties without the intervention of courts which is an expensive method of obtaining relief. Even now there is a provision which says that time may be granted if sufficient ground is shown. Yet the parties will have to put in a petition and an affidavit. In view of the fact that in the large majority of cases copies of plaints are filed along with the plaint, and that it is only under exceptional circumstances that they fail to do so; in such cases, the parties do really deserve some sort of concession. I think this amendment is superfluous and unnecessary.

PRESIDENT: In other words, in cases where there are no copies, Government should undertake to get those copies.

MR. P. NARAYANA PILLAI: Even now there are provisions for filing the copies of plaints and the parties are doing so according to such provisions. The present provision is quite sufficient. No unnecessary compulsion should be exercised on parties in the filing of copies of plaints.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: Under Section 24 of the Civil Procedure Code, every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. In view of this power amendments have been made by the several British Indian High Courts to Order IV for Rule 1 as it is enacted in the Civil Procedure Code. Our provision corresponds to the British Indian Order IV Rule 1. This proposal has been made by the High Court because it is their experience that the intentions underlying the provisions relating to concise statements are not duly complied with and such practice results in the miscarriage of justice. There is a concession given to the parties to file concise statements. Generally, these concise statements do not contain the important point contained in the plaint and it misleads the opposite party. That causes delay in the disposal of cases. On the strength of these mistakes and more generally on the inadequacy of the details contained, parties apply for time and do get a large number of adjournments for filing written statements. This can be avoided by

directing the parties to file copies of plaints at the time the suit is instituted. It is therefore proposed that every suit shall be instituted by presenting a plaint together with true copies of such plaint. As was said by the honourable member ordinarily that is being done. It is therefore not a new rule that is proposed. If that is so, I cannot understand why the member should say that this must be omitted. If the Court sees sufficient reasons to grant time it can do so. Then the copies may be filed on the date to which the Court adjourns it. The duty is imposed on the litigant public to file copies of the plaint along with the plaint filed in Court. This is the rule which prevails in Alahabad, in Oudh and in Lahore.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know what the rule is in Madras? This is not adopted there. May I know the reason for that?

MR. PUTHUPALLI S. KRISHNA PILLAI: Probably this is under their consideration now or probably the time has not come for taking that question. I am not in a position to say.

PRESIDENT: In Madras the rule so far as the original side of the High Court work is concerned is that the lawyer of the Plaintiff is responsible for giving a copy. They do not give copies in Court at all. All affidavits, all plaints, and all processes are exchanged between the lawyers. If there is no lawyer the party will give it.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Here also that is the rule. There is a provision to that effect in the Civil Procedure Code. If the opposite party demands copy of the plaint, the vakils who appear for the plaintiffs are bound to give the copy.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, the High Court has suggested that the rule in regard to the filing of concise statement might be changed. This change is proposed because the High Court is fully convinced that such a practice is necessary for the proper administration of justice. Power is also conferred on Courts to grant extension of time and I submit that the power would be quite sufficient for dealing with any case in which hardship might arise.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Sir, where there is no objection in allowing concise statements to be filed as for example in partition cases where there are two hundred to three hundred defendants sometimes, the concise statement must be allowed to be filed instead of copies.

MR. PUTHUPALLY S. KRISHNA PILLAI: There is very serious objection to this practice. True copies of the plaint might be filed along with the plaint in the case of the partition suit. After all in a partition suit you cannot expect to give a proper concise statement. It is mostly in these cases that there is a likelihood, either innocently or with a design of parties misleading the opposite party. It is in those cases mostly that these irregularities occur. Therefore let me ask what harm there is in doing away with the filing of concise statements

[Mr. Puthupally S. Krishna Pillai]

and insisting on the true copies of the plaint being filed along with the plaint. That certainly must be acceptable to all parties concerned.

(The question that "in Order IV, Rule I, delete sub-rule (1)" was put to vote and lost.)

MR. P. NARAYANA PILLAI: Sir, I beg to move that

"In Order IV, Rule 1, delete sub-rule (2)".

I think that this amendment is not of any use from the practical point of view. It means strictly payment of Court fees for summons along with the plaint.

MR. PUTHUPALLI S. KRISHNA PILLAI: The present practice of obtaining time for payment of process fee has been severely condemned by all the British Indian High Courts.

PRESIDENT: One of the things that is being practised by people here is that of getting various orders such as the appointment of receivers, orders of injunction, etc., without paying anything by way of Court fees. It is putting a premium not only upon deception of Government but harassing the other party without losing a single pie of one's own money. Such a practice is observed nowhere else in the world. A man goes to the Court and puts in Rs. 5 in respect of a Rs. 100 leviable as Court fee and gets various interim orders and harass the other side sufficiently and the suit is kept in cold-storage until it goes on for seven or eight years. It is one of the things that is rather humiliating to the outsiders' ideas of Travancore justice. I trust that honourable members would set their faces sternly and see that a public opinion is created that the dispensation of justice may be one of the watchwords in Travancore.

MR. P. NARAYANA PILLAI: According to this amendment the payment of cost is to be strictly enforced. In order that this amendment might become useful the payment of court fees chargeable on the plaint must also be insisted to be levied. Now according to the rules of the payment of court fees it is not necessary to pay the full amount of fee chargeable on the plaint at the time of the filing of the suit while the payment of process fee is insisted upon.

PRESIDENT: Order, order. When the Court Fees Act insists on the payment of the fee chargeable what is the reason for not paying the full amount and why is it that the full amount is not demanded? I want to know the reason from the honourable Legal Remembrancer.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, a bad practice has grown up and it has been growing up ever since the days of the economic depression. The Courts have been showing consideration and this has been taken undue advantage of by people. It has come to the notice of both the Government and the High Court that the privileges given to the plaintiffs are being misused to such an extent that the High Court have now made up their mind to take stern steps against this practice.

PRESIDENT : I take it that it is a misconduct on the part of every legal functionary to accept plaints without the full Court fee.

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, that is the rule in British India. But here a few years ago the matter was considered by the High Court and a decision was reported.

PRESIDENT : I take it that the Legal Remembrancer will try to introduce a Bill for this purpose if a Bill is found necessary.

MR. PUTHUPALLI S. KRISHNA PILLAI : Yes Sir.

MR. P. NARAYANA PILLAI : Sir, I do not wish to press the amendment.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : Is there not a provision in the existing Civil Procedure Code allowing a grant of time?

MR. PUTHUPALLI S. KRISHNA PILLAI : Under the Civil Court Guide when the document is filed before the Head Ministerial Officer if it has affixed to it some stamp, though not the requisite stamp he is bound to post it to a specific date for curing the defect. When the document is presented he is bound to admit it and when it is admitted it is to be judicially disposed of. Then comes the provision contained in the Civil Court Procedure and the courts are moved for granting further time. Though the British Indian Courts also have the power, it does not appear that the same is exercised on such a large scale. It is the present practice here to treat it as a matter between the court and party filing the document in Court.

PRESIDENT : That does not mean the harassing of the debtor without the creditor paying any money.

MR. PUTHUPALLI S. KRISHNA PILLAI : Yes, Sir. It does in practice. Our Courts are indulgent in this matter. It so happens that by manipulation the creditor is able to keep the process pending in the court for an unconscionably long time. Then it is dismissed or got dismissed for default of appearance. When it is restored to the file on motion made for the purpose the opposite party is not given notice. It seems to be a matter between the party and the Court. It is not the intention of the judiciary to be over indulgent in this respect in the future.

MR. P. NARAYANA PILLAI : I do not move this but section 130 of the Civil Procedure Code specifically gives powers to the Courts to grant time.

PRESIDENT : Generally the power of the Court to grant time is used, as honourable members who practice the legal profession will know, in cases in which it is difficult to find out what the exact court fee is It may be that the fee payable is more on account of the real nature of the suit or that it may be two or three types of fee may be leviable from which an alternative has to be chosen. Where there are those difficulties or where a *bona fide* mistake arises as in the case of the mistake of a clerk fixing a Court fee deposit of Rs. 500 instead of Rs. 550, time may be granted.

[President.]

One of the first things one notices when dealing with the question of Travancore judicial administration is the intolerable delay in the subordinate Courts relating to the disposal of cases. People seem to imagine that three, four or five years is a matter of course. With my practice extending over 37 years and extending to several tribunals all over India, I have never known the biggest original suit, say in Madras or Bombay, take more than two or three years at the most. The duration of trials here is also exceptional. One of the biggest cases that I have ever conducted on the original side of the Madras Court extended over a month. This was the Besant trial. And that was considered very protracted. In the mofussil larger time is taken but even there there is nothing like what happens here. Here one hears of argument going on for six months and examination and cross-examination go on for years. People must set their faces against this state of things What is the use of attempting to rehabilitate business in Travancore if people will get their money back only after seven or eight years. I trust that this House as the custodian of the reputation of this country and also as deeply interested in the business prosperity of the State will do everything in its power to check all possible dangers that this delay brings in. One of the causes of this delay is this very matter which I would call misplaced leniency. The Courts have fallen into the habit of allowing reliefs, passing orders on petitions and allowing various steps being taken without insisting on the payment even of the requisite Court fee and it appears to me that unless this Legislature steps in and prevents such an abuse of procedure and miscarriage of justice we shall not be able to wipe off that reproach. The professional competence and integrity of our judiciary have been generally acknowledged. But the question of delay has been a reproach and it should be removed and the House will I hope, take every possible step to prevent such delay.

The question that" In Order 4, Rule 1, delete sub-rule 2 was put and lost

MR. JOSEPH VITHAYATHIL; (*Kunnatnad cum Parur*): Sir, I beg to move the following amendment, namely.

> "In order IV. Rule, (2) (a) delete the full stop after the word "appeal" and add the following:
>
> "except a memorandum of appeal of which notice can be issued to the respondent only if the court orders the issue of such notice, in which case the court fee chargeable for the service of notice shall be paid immediately after the Court orders the issue of notice."

According to the amendment proposed by the High Court the word "plaint" in Order IV, Rule 1, (2) (a) shall include a memorandum of appeal. The object of my amendment is that in cases of appeals of which notice can be issued to the respondent only if the Court orders the issue of such notice the appellant should not be compelled to pay the process fee before the Court orders the issue of

notice, in other words, before the appeal is admitted. There is no meaning in asking a party to pay court fee for the service of notice before he gets a right to have such notice issued. It is true that if he pays the process fee and if the appeal is not admitted he can get back the amount. But we know the practical difficulty in getting back amounts deposited in Court. Apart from that, on principle it is not justifiable to compel a party to pay Court fee for a step which may or may not be taken by the court. He cannot be deemed to be defaulter for non-payment of process fee before the court orders the issue of notice. This amendment is necessary in view of the latest amendment of the High Court Act under which an appellant will become entitled to have notice issued to the respondent only if the court permits him to do it, *i, e.*, after the appeal is admitted by the Court.

MR. R. SIVARAMAN NAIR (*Tiruvalla*) : I second it.

MR. PUTHUPALLY S. KRISHNA PILLAI : Sir, I oppose the amendment. The amendment is to the effect that in the case of second appeals which come up on the regular file of the court, *i. e.* the High Court, the amendment says that the process fee need be paid only if it is admitted. Now when a party makes up his mind to prefer a second appeal he must be prepared for payment of all the necessary charges for issuing the process in case it is admitted. It should not be supposed that the court is there to decide the matter for him. He must feel some responsibility in the matter and not frivolously file an appeal.

PRESIDENT : Is it common to grant stays in regard to the second appeal ?

MR. PUTHUPALLI S. KRISHNA PILLAI : Yes, Sir.

MR. JOSEPH VITHAYATHIL : It is only if an appeal is admitted that the court can order the party to remit the process fee.

MR. PUTHUPALLI S. KRISHNA PILLAI : The question of admission is immediately taken up and the question of stay is also considered.

PRESIDENT : What is the usual duration of the time between the preferring of an appeal and its admission into the court ?

MR. PUTHUPALLI S. KRISHNA PILLAI : Nothing definite can be said about that, Sir. Usually it takes about a month. But what the High Court propose is that it should be made obligatory on the party preferring the appeal to make up his mind on the matter and to remit into the court all kinds of fees along with the memorandum of appeal. In other words, the process fee should also be remitted along with the filing of the appeal memorandum. Sir, the admission of an appeal is not a simple matter ; a Judge has to sit and hear arguments, sometimes very lengthy arguments. It takes even two or three hours, arguments in some cases before an appeal is admitted. If after admission the party does not pay the process fee, the appeal will be dismissed. This results in large waste of public time and money. In the case of the second appeal in which the payment of the process fee is a serious consideration for the party preferring the appeal we can conclude safely

[Mr. Puthupalli S. Krishna Pillai].

that the appeal is a frivolous one. If as a matter of fact there is a presentable case and an arguable question of fact or of law, it does not appear to me why the party should not make up his mind to pay the process fee also along with the Court fee and why there should be any delay in the matter. If the appeal is not admitted the parties are entitled to a refund of the unexpended process fee. I therefore oppose the amendment.

MR. JOSEPH VITHAYATHIL : I want to explain my position. The party gets the right to have notice issued to the respondent only after the appeal is admitted, and for that naturally the necessary Court fee has to be paid. Neither the Court nor anybody else suffers by reason of the process fee not being paid in advance. Why should the appellant be made to pay a fee which may not after all be used at all? The case of the Court fee is different; because whether the appeal is admitted or not that has to be paid. But the question of process fee arises only if the appeal is admitted. That being the case, why should the appellant be compelled to pay the process fee along with the Court fee?

MR. N. RAMAKRISHNA PILLAI: May I ask whether unexpended amounts of process fees will not be refunded to the party?

MR. JOSEPH VITHAYATHIL : That is a different matter. Why should the party unnecessarily pay and then ask for a refund?

MR. PUTHUPALLI S. KRISHNA PILLAI: Are not the second appeals ordinarily presented by the advocates engaged for the case?

MR. JOSEPH VITHAYATHIL : Certainly.

MR. PUTHUPALLI S. KRISHNA PILLAI: Is it not the practice for the lawyers to get from the party the necessary process fee also even before they prepare the appeal memorandum and put it into Court?

MR. JOSEPH VITHAYATHIL : Yes; but what right has the court to insist upon the payment of a fee which may turn out to be absolutely unnecessary?

PRESIDENT : The matter is really very simple. The second appeal is, when rightly construed, a luxury because the party has had a fair chance of litigating about his rights and when he is indulging in that luxury he does so because he is convinced that there is justice on his side and that there has been some miscarriage in a matter of law or procedure He does not file the second appeal merely for the fun of doing so. Sometimes it may happen that if he files the second appeal by the mere fact that he has filed a second appeal, he can get good terms by way of a compromise from the opposing party; very often second appeals are filed for that purpose. But ordinarily speaking, if he is convinced of the justice of his case, if it is a case fit for admission, there is little harm in his being made to pay the process fee also along with the Court fee.

It must be remembered that this process of demanding the process fee also; even at the first instance is not for the benefit of either party but for the sake of bringing about economy of judicial time. Two

Judges should not be hearing a second appeal when it may be that it can be dismissed straightway by one Judge. The provision now sought to be intended has been made for judicial and public convenience. I do not see why any special facility should be given to a party filing a second appeal to gamble upon the question of admission. After all the country is paying the High Court Judges the salary for hearing these appeals. If a particular party is speculative in his activities and wants the luxury of gambling, why should he not pay the process fee also, in the first instance?

MR. PUTHUPALLI S. KRISHNA PILLAI: Further, Sir, as has been pointed out by Mr. Ramakrishna Pillai all unexpended process fee will be refunded.

The amendment was put to vote and lost.

The question that Order IV as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

It was added to the Civil Procedure Code.

Orders V and VI.

The question that Orders V and VI as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

The orders were added to the Civil Procedure Code.

Order VII.
Rule 9.

MR. JOSEPH VITHAYATHIL: Sir, I beg to move the following amendment:—

> **"In Order VII, Rule 9, for the words "for the comma after the word 'defendants' where it occurs for the first time" substitute the words "for the semi colon after the word "it".**

Now, Sir, in view of the amendment it is necessary to make further amendments on this rule. Because according to the previous amendment the copies of plaints to be served on the opposite party ought to be filed along with the plaint. In view of that amendment it is necessary to make amendments in Rule 9 also.

PRESIDENT: I do not think that there is any objection in adopting the amendment now moved by Mr. Vithayathil.

MR. PUTHUPALLI S. KRISHNA PILLAI: I am prepared to accept the amendment, Sir.

The amendment was put to vote and carried.

Rule 20.

MR. JOSEPH VITHAYATHIL: Sir, I beg to move the following amendment:

> **"In order VII, Rule 20, for the words "in which" where they occur for the second time, substitute the words "within whose jurisdiction".**

Evidently parties do not reside in Courts. The wording of the proposed rule is certainly ambiguous. Hence my amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: The difficulty pointed out by the honourable member Mr. Vithayathil arises, I submit, because of a misreading of the provision as it stands. What the High Court thought was that there was no need to repeat the expression "within whose jurisdiction". I submit, that is implied.

I do not think it can reasonably be argued that any person would reside in a court.

PRESIDENT: Certainly, the language is capable of improvement.

MR. PUTHUPALLI S. KRISHNA PILLAI: All the British Indian Acts have adopted the wording accepted by the High Court.

PRESIDENT: But what have you to say to the amendment moved by Mr. Vithayathil.

MR. PUTHUPALLI S. KRISHNA PILLAI: There is no objection to that; but my only submission is that it is unnecessary.

PRESIDENT: Are you willing to accept the amendment?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir.

The amendment was put to vote and carried.

Rule 22.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I beg to move the following amendment.

Insert the words "or Anchal" after the words "registered posts". Wherever Anchal service is available it is only right that provision should be made for that. The expression 'or Anchal' occurs in various other places in the Code. The present amendment is intended to rectify the omission.

MR. M. GOVINDA PILLAI: I second it.

The amendment was put to vote and carried.

The question that Order VII as amended do form part of the Civil Procedure Code, was put to vote and carried.

The Order was added to the Civil Procedure Code.

Orders VIII to XV.

The question that Orders VIII to XV as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

The Orders were added to the Civil Procedure Code.

Order XVI.

MR JOSEPH VITHAYATHIL: Sir, I beg to move the following amendment:—

In Order XVI, Rule 2 (1), delete the full stop after the word "application" and add the following:

And also delete the words "appears to the Court to be" and insert in their place the word "is".

According to the provision as proposed by the High Court the parties have to pay along with the application an amount which appears to the Court to be sufficient to defray the travelling and other expenses of the witness. Now, how is the party to know whether the amount that he remits along with the application will be sufficient or not according to the opinion of the Court? As the amount has to be paid along with

the application for summons there is no occasion for the Court to inform the party of the sufficiency or otherwise of the amount, and there is no meaning in asking the party to deposit along with the application an amount which may subsequently appear to the Court to be sufficient. Therefore I suggest that the party should pay such amount as would be sufficient to defray the expenses.

MR. R. SIVARAMAN NAIR : But who is to decide whether the amount so remitted by the party would be sufficient to defray the expenses.

MR. JOSEPH VITHAYATHIL : There are rules relating to that matter.

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, I have real difficulty in accepting my friend's amendment although I quite appreciate his point. If, as he now proposes, it is provided that a party need pay the amount sufficient to defray the expenses, suppose a party makes up his mind to decide that only third class batta shall be paid to a particular witness; the Court will have no right or power to say that it shall not be third class batta but shall be second class or first class batta in any case and that unless such higher amount is remitted summons would not issue. There must be such power reserved with the Court. That is the reason why the High Court have left the provision as it is.

There is another amendment standing against Mr. R. Sivaraman Nair to omit the proposals of the High Court to amend the present rules.

PRESIDENT : But how is the party to know what the Court will consider as sufficient?

MR. PUTHUPALLI S. KRISHNA PILLAI : There are rules for that purpose already published in the Civil Courts Guide. Those rules say in which cases third class batta have to be given, in which cases second class batta and so on.

PRESIDENT : Would it not be proper to provide something like this—the party shall pay the amount payable under such and such rules the Court having the right to alter or to amend such rules from time to time.

MR. PUTHUPALLI S. KRISHNA PILLAI : That is exactly what is meant by the High Court.

PRESIDENT : It is a matter of wording.

MR. N. NARAYANA KURUP : May I know whether the Courts are not exercising the very same discretion even now?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, it is on account of that that Mr Sivaraman Nair intends to move for the deletion of the provision.

PRESIDENT : I take it that the objection of Mr. Vithayathil is this: As the provision is worded at present, a person is asked to pay a certain amount as fixed by the Court before the Court has any chance of so fixing it.

MR. PUTHUPALLI S. KRISHNA PILLAI : I agree, Sir; but my point is that the wording suggested by Mr. Vithayathil is not acceptable.

PRESIDENT : My own suggestion is that this is a matter of proper wording of the provision about which the Legal Remembrancer and Mr. Vithayathil can put their heads together and come to an agreement during lunch time. This can be taken up again after lunch.

MR. JOSEPH VITHAYATHIL : I may make it clear that I do not want to take away the power of the Courts to exercise their discretion in the matter. In fact, even according to my amendment it is the Court's opinion as to the sufficiency of the amount that counts and not that of the party. My only point is that no party should be asked to pay an amount before he could possibly know what exactly the amount is.

MR. PUTHUPALLI S. KRISHNA PILLAI: The amendment as proposed by Mr. Vithayathil is not acceptable as it is likely to lead to this difficulty, *viz.*, who is to decide the sufficiency of the amount ?

PRESIDENT : Is there no other provision for that ?

MR. PUTHUPALLI S. KRISHNA PILLAI : All that the Civil Courts Guide says is third class batta shall be payable in such and such cases, second class in such and such cases and so on. But the question as to whether the amount of process fee paid into the Court is sufficient or not is one that must be left entirely to the Judge; at any rate, the power must be reserved for the Court to decide that matter.

PRESIDENT : In processual matters, as the honourable member Mr. Vithayathil must be aware, it is not safe to rely on the inherent jurisdiction of Courts; it is therefore better to put it in clear terms. I would therefore suggest that the matter is taken up after lunch. I shall now proceed to Order XVII.

Orders XVII to XIX.

The question that Orders XVII to XIX as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

The Orders were added to the Civil Procedure Code.

Order XX.

Rule 2 (1).

MR. R. SIVARAMAN NAIR : "In order XX, Rule 2, as proposed, insert the words "written by the Judge" after the words "shall be".

Under the old rule the provision was that the judgment shall be written by the Judge in his own hand in the language of the Court or in English. Now, as amended by the High Court all that the rule provides is that the judgement shall be in Malayalam, the language of the Court, or in English; but there is no obligation that the judgment must be written by the Judge, in other words, that the authorship must be with the Judge. It should not be left to a presiding officer to leave it to his clerk to write out the judgment. It is to make this point clear that I propose the amendment.

PRESIDENT : Does the honourable member object to dictation of judgments ?

MR. R. SIVARAMAN NAIR : No, Sir; but my point is that the authorship of the judgment must be with the presiding officer.

PRESIDENT : Presumably judges exist for that (*laughter*).

MR. R. SIVARAMAN NAIR : But there is no legal obligation on the part of the judge to do that, under the rule as amended by the High Court.

MR. PUTHUPALLI S. KRISHNA PILLAI: Under the old Civil Procedure Code difference was maintained between those judgments written by Munsiffs and those written by District Judges. Order XX, rule 2, is peculiar to Travancore. It provides that judgment shall be written by the Judge in the language of the Court or in English, in his own handwriting in the case of Munsiffs, whereas, in the case of District Court they need not be in the handwriting of the Judge. In sub-clause 2, provision is made to the effect that in cases where judgment is not written in the handwriting of the Judge, the Judge should sign each page of the judgment and sub-clause 3, provides for the signature of the Judge. So, sub-rules 2 and 3 make it absolutely clear that the authorship shall be with the presiding officer. I submit, therefore, that no alteration is called for.

MR. R. SIVARAMAN NAIR: All that the provision says, Sir, is that the judgment shall be written in Malayalam or in English and signed by the presiding officer. There is absolutely no obligation, so far as I can see that the authorship must be with the presiding officer. It is perfectly possible that a perverse judicial officer may take advantage of the present provision and ask one of his clerks to write his judgment.

PRESIDENT: Assuming that that degree of perversity is possible even if it is provided that all judicial officers shall write all judgments in their own handwriting, there will be nothing to prevent a perverse officer from leaving the authorship of the judgment exclusively to his clerk, himself copying it laboriously (*Laughter*).

MR. R. SIVARAMAN NAIR: I am not suggesting that there is any such judge in Travancore; my only submission is that the law must impose an obligation on the part of the judge in this matter.

The amendment was put to vote and lost.

The question that Order XX as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

The Order was added to the Civil Procedure Code.

Order XXI.

Rule 6.

MR. JOSEPH VITHAYATHIL:

"In Order XXI, Rule 6, substitute the word "rules" for the word "rule" where it occurs for the first time.".

MR. PUTHUPALLI S. KRISHNA PILLAI: That is a printer's mistake; I accept the correction.

The amendment was put to vote and carried.

Rule 14.

MR. JOSEPH VITHAYATHIL:

"In Order XXI, Rule 14, delete the full stop after the word "executes" and add the following:

"it or, if execution has not been begun to the Court which has jurisdiction to execute it".

I move for the addition of the word "it" after the word "executes" in order to correct a mistake apparently made by the printer. Now the real object of the amendment proposed by the High Court is to allow the execution Court, to recognise the assignment of decrees and to execute such decrees. But if execution is not already begun, then also, according to my amendment, the application for recognising the assignment and executing the decree should be made to the Court which has jurisdiction to execute the decree. If execution is begun, the Court which executes the decree can recognise the assignment and proceed with the execution. If execution is not already begun the Court which has jurisdiction to execute the decree can recognise the assignment and execute the decree. It is therefore better to give that power to the execution court even if execution is not already begun. The application may be filed in the court which has jurisdiction to execute the decree. That is the object of my amendment.

MR. N. RAMAKRISHNA PILLAI: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: I oppose the amendment. There is another amendment lower down to the effect that assignment shall be recognisable by the court which passed the decree or by the court to which it is transferred for execution. That is the provision which the High Court want to bring into effect. There is no doubt that there is some difficulty in the proposal now made, as it stands; and it has to be amended. But for that, I am prepared to accept amendment No. 12. That is the rule in most of the British Indian Courts. My friend's present amendment is misleading.

PRESIDENT: It is safer to adopt the wording adopted elsewhere.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir.

The House adjourned for lunch at 1 p. m. and reassembled at 2 p. m.

MR. JOSEPH VITHAYATHIL: Sir, with regard to Order XVI Rule 2 (1), in addition to the amendment suggested by me, I may be permited to move a further amendment. That is, in Order XVI, Rule 2 (1) add the following as a proviso :—

"Provided the court may direct payment of any further sum within such time as the court deems fit to fix."

That solves the difficulty suggested by the learned Legal Remembrancer.

MR. N. RAMAKRISHNA PILLAI: I support the amendment of Mr. Vithayathil. Order XVI, Rule 2 (1) provides for the payment of the batta and travelling expenses to witnesses along with the application. The object of the rule is to emphasise that the money should be paid along with the application. Emphasis is laid on the date of the application. The prevailing practice is that the application is made and the batta is allowed to be paid at any time before orders are passed. To avoid delay in payment of batta the rule provides that the paymen

should be along with the application. But the court has to decide as to the class to which a witness belongs so that the batta may be fixed accordingly. Of course, the party has also the discretion to fix the class to which the witness belongs. The discretion of the court may be exercised at the time of granting the application or at the time of the examination of the witness, so that it is not correct to say that the amount of the batta is finally fixed at the time of filing the application. The batta may be paid provisionally and final orders may be passed at the time of the examination of the witness. All that the rule proposes is to compel a party to make the payment, whatever it is, along with the application, leaving it to the discretion of the court to fix the batta subsequently. The payment is insisted upon at the time the application is filed.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, the motion tabled by Mr. Vithayathil is to substitute the word "is" for the words "appears to the court to be". I am prepared to accept it. But, as I pointed out, there must be a provision for enabling the court to deal in cases in which in the opinion of the court sufficient batta has not been paid. It was only that difficulty that confronted me when the motion was discussed. Without the proviso now proposed by Mr. Vithayathil it will appear that a party may contend that he has paid sufficient batta and under the rules it may be sufficient, but the court may say "Pay in some additional sum as batta". This proviso only enables the court to exercise that power whenever it finds that sufficient batta has not been paid and this vests jurisdiction in a court to determine finally what is sufficient for the issue of the batta. Such cases may be very rare, but we have to provide for such cases also. If in exceptional cases it appears to the court that sufficient money has not been paid the power must vest in the court to decide the sum to be further paid. This is only by way of abundant caution. Sir, I agree to the proviso proposed to the amendment by Mr. Joseph Vithayathil.

The amendment proposed by Mr. Vithayathil as finally settled was put to vote and declared carried.

MR. R. SIVARAMAN NAIR: In Order XXI, Rule 14, as proposed, omit the words "executes it" and insert in their place "passed it or to any Court to which it has been sent for execution".

The Rule under the Civil Procedure Code of 1100 is that the transferee may apply for the execution of the decree to the court which passed it. But now under the suggested Rule a transferee can apply to the court which executes it and if the decree is not being executed there is no provision as to where an application for execution should be made. It is to remedy that defect this amendment is moved, so that if the decree is being executed the application may be filed in that court and if it is not being executed, it may be filed in the court which has passed the decree.

MR. P. SIVARAMA PILLAI: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: I have no objection to adopt the amendment.

The amendment was put to vote and declared carried.

MR. PUTHUPALLI S. KRISHNA PILLAI: In Order XXI Rule 20 delete the words "as in Allahabad and other Courts."

KHAN BAHADUR G. S. ABDUL KARIM: I second it.

The amendment was put to the vote of the House and was declared carried.

MR. JOSEPH VITHAYATHIL: In Order XXI, Rule 44 A, line 4, for the words "not in the possession of the judgment-debtor" substitute the words "belonging to him but not in his possession". This is only a formal amendment. As the Rule stands at present, it applies to any movable property not in the possession of the judgment-debtor whether it belongs to him or not. That will certainly be an absurdity. It is better to make the position clear.

MR. PUTHUPALLI S. KRISHNA PILLAI: I would make the suggestion that the words "in which he has an interest but which is not in his possession" may be substituted for the proposed amendment of Mr. Vithayathil and if it is acceptable to him I am prepared to accept the amendment.

MR. JOSEPH VITHAYATHIL: I agree.

The amendment that the words "in which he has an interest but which is not in his possession" be substituted for the words "not in the possession of the judgment-debtor" was put to vote and declared carried.

MR. PUTHUPALLI S. KRISHNA PILLAI: In Order XXI, Rule 44 E, delete the word "in" appearing in the expression "as in hereinbefore provided". It is only a printing mistake.

KHAN BAHADUR G. S. ABDUL KARIM: I second it.

The amendment was put to vote and declared carried.

MR. PUTHUPALLI S. KRISHNA PILLAI: In Rule 44 F after the words "by the garnishee whether," insert the following namely, "on a notice under Rule 44 A or". The present rule contemplates only one case and the amendment is to make it more comprehensive. I find that this is due to an omission.

KHAN BAHADUR G. S. ABDUL KARIM: I second it.

The amendment was put to vote and declared carried.

MR. JOSEPH VITHAYATHIL: Sir, I move:

"In Order XXI, Rule 55, after the word "rule" add the words "deleting the full stop" and omit the words "on the dismissal of the application, the attachment shall cease."

It is only a duplication of the existing provision in the rule. Hence my amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: The High Court wanted to retain the last words of the existing provision, *viz.*, "unless the court expressly directs that it shall continue in force." Therefore it is enough if those words alone are added to the existing clause.

PRESIDENT: The question before the House is that in Order XXI Rule 55, after the word "Rule" add the words "deleting the full stop" and omit the words "on the dismissal of the application the attachment shall cease." It was put and carried. It was added to the Bill.

MR. PUTHUPALLY S. KRISHNA PILLAI: I move

"In Order XXI, Rule 67 (2), omit the word "also" occurring in the expression "provided also."

There is only one proviso to that clause and it is purely a clerical error.

PRESIDENT: The question before the House is that Order XXI as amended form part of the Rule.

The motion was put and carried.

The question that Order XXII to XXXI form part of the Rule was put and carried.

The question that Order XXXII to XXXIX form part of the Rule was put and carried.

Order XL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I am not pressing my amendment. But I may say that except in the wording of the last portion, no change is necessary. The portion referred to reads thus:

"In cases where a judgment is not written by the Judge in his own hand, each page of the judgment shall be signed by him."

I have reproduced Order XX, Rule 2, which ought to form part of the Bill. This is only a formal amendment.

ORDERS XLI TO XLVI AND SCHEDULE.

The question that Order XL as amended stands part of the Bill was put and carried.

The question that Order XLI to XLVI and the Schedules etc., form part of the Bill was put and carried.

MR. PUTHUPALLY S. KRISHNA PILLAI: I move that the Civil Procedure Code (Amendment) Bill be passed.

KHAN BAHADUR G. S. ABDUL KARIM: I second it.

The question before the House is that the Civil Procedure Code (Amendment) Bill be passed.

The motion was put and carried.

THE TRAVANCORE RUBBER CONTROL BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I rise to introduce the Travancore Rubber Control Bill. I may be permitted to briefly explain the principles underlying this Bill and the object with which it is now proposed to be introduced. The existing Rubber Control Act has been extended for a further period of 5 years by virtue of the power conferred on Government under Section 1 of the Act. Sometime before the operation of the Act was extended, the Government of India had entered into a further agreement with the International Rubber Regulation Committee under which an important privilege was acquired for all the rubber producing countries. Under the existing Act, rubber cultivation is restricted and it is permitted only for experimental purposes. As a result of the International Agreement, this restriction has

been removed to a certain extent. That is a privilege for all rubber producing countries to extend their cultivation by 5 per cent. of the existing rubber estates in such countries. India being the participating country has acquired a privilege to plant an additional area to the extent of 5 per cent. of the existing rubber estate in the whole of India. The total rubber area in India comes to 1,28,000 acres and India gets an additional 5 per cent. of this acreage. The total extent comes to about 6,400 acres. As the existing statute prohibits the planting of rubber except for experimental purposes, it requires amendment in order that this privilege may be enjoyed by the people of this State. Therefore it was found necessary to effect suitable alterations in the provisions restricting the cultivation of rubber. Experience has shown that the existing provisions relating to the restriction of export and import are also inadequate. Now, exports and imports are prohibited by notifications published under the Sea Customs Act. But under that Section it is not possible for us to prescribe adequately the necessary conditions under which exports might be made. We have simply said that no export can be made until a permit is received from the Rubber Licensing Committee. But what are the conditions subject to which such licenses can be issued? What are the rights and privileges of a rubber estate owner? If the owner does not get the quota which he is entitled to, what should be his remedies? These are matters which have cropped up on very many occasions and which Government have to decide in some way or another. The absence of specific statutory provisions enabling Government to deal with those matters have become a handicap for them in the proper disposal of these matters. Therefore, a provision is proposed to be made in the Bill enabling Government to deal with these matters. It has also been found that the penal provisions contained in the existing statute require further amplification and suitable amendment when the main provisions are amended or amplified, the penal provisions also have to be amended. Therefore, it has become necessary to amend the Bill. The question considered was whether it would be enough if a peacemeal amendment of sections here and there is made or a regular consolidating Act is brought up. On a consideration of all the circumatances, it was found that a codifying Bill would be more suitable. Therefore, all the provisions that are necessary for the purpose of implementing the International Agreement entered into by the Government of India are embodied in this Bill. Government are informed that some of these clauses would require modification, in view of the position taken up by the Government of India in regard to matters connected with the International agreement under the scheme. Those matters are not many. But they are matters which should be considered. I am referring to clauses 3 to 6. Apart from that, this Bill is on all fours with the proposed Indian Rubber Control Bill, which seeks to amend the existing Rubber Control Act, I therefore move that the Bill be read in the Assembly.

KHAN BAHADUR G. S. ABDUL KARIM: I second it.

The motion that the Bill be taken up for consideration was put and carried.

MR. DOMINIC JOSEPH: I oppose the Bill. The Indian Rubber Planters are labouring under a great disability as a result of the Rubber Control Scheme—a disability the kind of which no other signatory country to the International Rubber Restriction Scheme is subject to. That is on account of the fact that there is unrestricted export of Burma rubber into India. In India, there is a large quantity of Rubber produced which cannot be exported to foreign countries under the Rubber Restriction Scheme and therefore it has to be sold out in India itself. The demand for rubber for local consumption is smaller than the surplus rubber that is produced in India. Therefore the surplus rubber gets only a price which is even below the cost of production. From the very inception of the Rubber Restriction Scheme, the Indian planters have been agitating for the exclusion of the Burma rubber. Under the International Rubber Restriction Scheme, Burma and India are separate and independent units with separate basic quotas, with separate licensing committees and with separate controllers. It is opposed to the very principle underlying the Restriction Scheme that Burma should be allowed free export of rubber into India. As a result of the representations that have been repeatedly made to the International Committee, the reasonableness of the Indian demand has at last been recognised and a provision has been made that if the Governments concerned in India insist on the exclusion of Burma rubber, provision will be made for the allotment of an additional quota of 3000 tons to the basic quota already allowed to Burma. Even though several months have elapsed since the revised Restriction Scheme has come into force, thus far the situation remains what it originally was. This has caused considerable prejudice to the Indian planters. I understand that during the first three months of this year, 1939, nearly two million pounds of rubber have been dumped into India from Burma. The House will realise what a very difficult situation has been brought about to the Indian planters by this dumping.

PRESIDENT: What is the method by which the honourable member proposes to deal with that situation? It is undoubtedly a great situation.

MR. DOMINIC JOSEPH: My suggestion is that the consideration of this Bill should be postponed to a future date, until this Indian demand is satisfied because on all hands it is admitted that the demand by the Indian planters is a reasonable one. The International Agreement also provides for that. Until this demand is satisfied, my submission is, that the introduction of this Bill must be postponed. A leading English paper which has got a prominent place in the planting world has recorded the opinion that the experience about the working of the Rubber Restriction Scheme so far has proved that it is only the recalcitrant members that get a generous treatment at the hands of the International Committee. We are not asking for a generous treatment.

We are asking only for a just treatment and a fair treatment. The reasonableness of the grievance of the Indian Planters has been already recognised by the International Committee and this unjust treatment is bringing about a considerable amount of prejudice to the Indian planters. Therefore my submission is that the consideration of this Bill be postponed to a future date, until this demand is granted.

MR. T. C. KESAVA PILLAI: Sir, I rise to support the principle of the Bill.

PRESIDENT: The honourable member will kindly raise his voice.

MR. T. C. KESAVA PILLAI: An adjournment motion was made in this Assembly regarding the allotment of acreage for planting rubber to private individuals other than planters. Government then replied to inform the Rubber Licensing Committee about it and a favourable decision has been arrived at by which the citizens of Travancore are privileged to plant some more acres of land with rubber. By the postponement of the consideration of this Bill the birthright of individual Travancoreans for planting rubber by a few more cents will be prejudiced. Under such circumstances, I would request my friend to start a rubber factory to consume the excess rubber that is produced in Travancore; It is said that if one wants to plant one acre of rubber he has to pay a fee of Rs. 25. If that is so, it is high time that we pass this Bill. As such, I support the principle of this Bill.

MR. J. WHITLY TOLSON: In welcoming a renewal of the Rubber Control Bill I feel that every care should be taken to see that the industry is helped and not handicapped. We are all aware that in 1931 the additional rubber in the world were unsaleable. The International business world got together in uniting a scheme for defining a Rubber Restriction Act which may be passed by all countries. I think during the past five years it has worked well. Since that date the industry had gradually with restriction for the past five years achieved some measure of prosperity. I would go to the extent of saying that India should enter into an agreement with Burma.

MR. DOMINIC JOSEPH: Is the honourable member aware that commodities like rubber and tea are exempted from the operation of that trade agreement?

MR. J. WHITLY TOLSON: I am not aware. I know that a great deal of correspondence is taking place. I think I am right in saying that it has nearly reached the point whereby an agreement may be reached between the Government of India and Burma. I am not certain. But I am sure there has been discussion on that topic.

With regard to this Bill there are several sections which may cause difficulties and increase the cost of maintenance of the office and that of control. Further, it appears to prevent the free passage of rubber between, say, Travancore and Cochin. There should be no interference with the existing facilities of quota transfers or with the acquisition by producers and others in Travancore of planting rights

from Cochin and British India. I hope that this House will see that every help is given to the industry and that such alterations will be made to prevent any embarrassment to the industry. As I have already said it is an International agreement and it is going to run for the good of all. I think one should look at this great industry such as rubber not from the point of view of only Travancore but India, Ceylon, Malaya and Duch East Indies. I trust that suitable amendments will be made in this Bill so that at the end of a further five years we may look to a prosperous time which is beneficial to the industry.

MR. S. KRISHNA AIYAR: I have great pleasure in supporting the principle of this Bill. The one objection that has been brought forward is to restrict the import of Burma rubber into India. I do not see what relevancy that has to the restriction of rubber protection and rubber export on the principle of this Bill. The honourable member who opposed the Bill has been saying that this Bill must be suspended till the difficulty about the import of Burma rubber is overcome. Representations have been made to Government of India and to this Government and I believe this Government has taken adequate steps to see that the position of this Government is helped in Simila and other parts of India. But why should this Bill be held up when that matter is still under discussion. The price of rubber about the year 1930 was so low that rubber plantation was likely to be stopped. The Indian Restriction Bill of 1930 in which we participated gave a revival to the rubber industry. It enabled to take control of Travancore rubber into its own hands. I believe the idea underlying this Bill is that the Travancore Government will have its own rubber licensing committees.

Thus for, we have been working in co-operation with the Indian Rubber Licensing Committee. The Travancore Government have two members on the Committee and licenses are being issued every day to growers in Travancore, Mysore, Cochin and other States. It is well known that over 79 percent of the rubber produced in India is from Travancore. Under the circumstances Travancore has more at stake than the rest of India. But, however, there are difficulties. There is the question of transfer of quota or licenses from British India to Travancore and from Cochin to Travancore and *vice versa* I should like the Legal Remembrancer to inform us as to the expediency of having Rubber Licensing Committee of our own like Ceylon or whether we had better work in collaboration with the Indian Licensing Committee.

There may be further difficulties. The provisions of our Bill enact that licenses should be delivered to our customs authorities. That may enable us to take our rubber to Arukutty through which place most of the rubber produced in Travancore is exported and not beyond. But what about the state of Cochin and the Port of Cochin. Possibly some arrangements have been made by Government with the above authorities. I wish the Legal Remembrancer would tell us what we are to do after delivery of our license at Arukutty and there is no provision to get it back.

One or two other difficulties also arise in this connection, for example, questions like re-planting. Section 18 (3) relates to this aspect.

MR. PUTHUPALLY S. KRISHNA PILLAI: It relates to individual planting as distinct from re-planting.

MR. S. KRISHNA AIYAR: In that Section. I find the word 're-planting.' I am perfectly right in saying that that Section refers to replanting. But that objection may be an objection of detail, as to how the present Licensing Committee have arrived at certain figures.

Further consideration is required under Section 21, under which holders whose estates are acquired by Government are given permission for fresh planting. In respect of tea when tea lands are destroyed by fire or flood, holders are permitted to plant afresh. Some such arrangements have to be made in respect of rubber plantations as well. There was once a case of one entire estate being washed away. There is the question of tea as well where the Government have not taken control, and the grievances of Travancore growers go unredressed. Apart from all these it is necessary for the Government to take the restriction of rubber in its own hands. With these few words I have very great pleasure in supporting the provisions of this Bill.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Sir, I wish to make a few observations especially with regard to part III of the Bill which deals with the control over extension of rubber cultivation. Sir, in this connection, I may be permitted to state that the whole population who had no opportunity to plant their lands with rubber plants before the promulgation of Act II of 1112, are extremely grateful to Government for the issue of Press Communique dated the 29th May 1939 regarding the distribution of new planting rights among the several applicants in Travancore and for the subsequent steps that have been taken by them in the matter.

PRESIDENT: Order, order. The Honourable member's gratitude might be kept in reserve because the matter is not completely settled.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Sir, I am aware of it and fully believe that the final settlement will be in conformity with the recommendations made by our Government. I have been for long carrying on correspondence with the Controller of the Indian Rubber Licensing Committee protesting against the provisional decision of the Committee to distribute the whole sanctioned area for new planting among the owners of the already existing rubber estates only and also requesting the Committee to reconsider their provisional decision in regard to this matter. Sir, it is seen from the replies I have received from the Controller that the Committee and the Controller have been attempting to make the right of new planting a sort of monopoly in favour of the owners of already existing rubber estates. Sir, this provisional decision of the Licensing Committee is inequitable for two reasons, (1) The benefits derived by the owners of the existing rubber estates under Rubber Restriction Scheme will not and cannot tantamount to benefits to other holders or owners of land who have had

no opportunity or good fortune to plant their lands with rubber plants before the enactment was passed and (2) Before the promulgation of Rubber Restriction Regulation no notification has been published by Government calling upon the holders or owners of land to plant their intended areas with rubber plants before a specific date so that they may also get the benefit of rubber planting under this scheme. Many people had purchased or registered lands in their names with the object of planting the same with rubber plants and it is a common fact that they could not do so before the promulgation of the Rubber Rutriction Regulation on account of the serious economic depression and also for several unavoidable circumstances. It is the primary right of every owner of land to plant his land with anything which is not dangerous to the public and under the circumstances what I wish to urge upon the attention of this House is that in the Act there must be sufficient and adequate safeguards which would enable the Government to effect an equitable distribution of the new planting rights of rubber and of the total area sanctioned for the purpose among the several new applicants who are apparently not the owners of existing estates. The absolute denial of the new planting right on the sole ground that the applicants are not the owners of rubber estates is not at all justfiable on any valid ground.

Another objection I have to urge on the attention of this House is this: The right of new planting as the matter stands at present is made transferable. Sir, I think this is bad in principle. So my submission is that the right of transfer that is being exercised just at present should also be prohibited by some specific provisions in the proposed enactment. With this general observation I accept the general principle of the Bill and I would also add that it is highly necessary in the interests of all concerned, to give the Select Committee unrestricted powers to include the necessary additional provisions in the Bill, if they think it necessary as the result of their careful deliberations and scrutiny.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I wish to say a few words. Sir, it has been said by one Honourable member that the opposition to the principle contained in this Bill is that Burma rubber is being allowed......

MR. DOMINIC JOSEPH: Sir, I did not say that I oppose the principle of the Bill.

MR. PUTHUPALLY S. KRISHNA PILLAI: Yes, you were arguing that the consideration of the Bill must be postponed pending the decision of the question relating to the import of Burma rubber. This was a question which was engaging the attention of this Government for some time past. Representations have been received from various rubber interests in the State that this Government should co-operate with the Indian Rubber Licensing Comittee and rubber interests in and outside the State to bring home to the Government of India the necessity for making some provision whereby Burma rubber like other rubber should be covered by an export license or certificate. This Government communicated with the Government of India on that matter and did not lose

any opportunity in further making or attempting to draw the attention of the authorities in this matter. It must be remembered that this position, the privilege which the Burma rubber gets, is a privilege based on an agreement which the Government of India had entered into with the Government of Burma at the same time as the passing of the Act or a little after the separation of Burma from India. That agreement is revisable only after a definite period. Government have information and assurance that the matter will be considered when it will be possible for the Government of India to consider it. It is understood that the agreement is revisable in 1940. Steps, it will be remembered, have already been taken to discuss and decide the matter and it is hoped that the question will be solved favourably to India. And, at the same time it must be remembered that the Burmese rubber interests are also agitating that they do not want this privilege but will be satisfied with whatever privilege they are entitled to get under the International agreement. Because, under the International Agreement it would appear that when such a rule is made, Burma is entitled to additional quota. They say they will be satisfied with that. Still, the difficulties the Government of India feel in the matter of granting this privilege are very great. As component parts of one rubber controlling unit, Travancore will have to respect the agreements already entered into by the Government of India with other Governments in regard to this matter. And, our statute itself says that it is for implementing the agreements entered into by the Government in regard to this matter that the measure has been enacted. We are therefore under that obligation. We cannot all on a sudden say that the Government of India is not prepared to prohibit Burma Rubber, except that covered by a license, we are not prepared to accept this legislation and that it should be postponed. That is not fair.

This Bill, as I pointed out, contains one important provision which must be welcomed by all Rubber Estate owners and also non-owners in the State. It relates to new planting rights. Before the existing Act was put into force, the practice was to cultivate rubber on an unrestricted scale; any owner of land had the right to cultivate any extent of land belonging to him, and this right was being exercised unrestrictedly. It was found that it was in the interests of existing owners that further extensions should be prohibited. Those who had not already come into the field did really agree that such a step might be taken. Therefore an enactment was passed restricting cultivation of rubber for any purpose other than experimental purposes. But this position has been altered and the whole of India gets the right to plant 6400 acres of new land. It was referred to by one or two Hon'ble members here that the policy adopted by the Government in allowing fresh plantations to the extent permitted should be pushed through and the Hon'ble member Mr. T. P. Velayudhan Pillai said that he congratulated the Government on their new policy. Government are convinced that no system of agriculture shall be the monopoly of any person in the State. The planting of rubber was first restricted for a period of

five years and then the Government extended the period to another five years. It was not in the contemplation of the Government that this planting right should be a privilege in the hands of the existing rubber estate owners. After all the restriction was imposed in the interests of the rubber estate owners, therefore, when it is released it must be in the interests of all persons concerned, not only present rubber estate owners but also those who may cultivate hereafter. Government therefore took up the position that all alike should be entitled to cultivate rubber. Government do not stand in favour of any distinction between estate owners and others. Government also noticed that in allowing transfer of new planting rights, such rights will be purchased by capitalists who are interested in rubber cultivation. Now, such purchase naturally means parting with money. Government find that the price of one acre of land suitable for rubber is as high as Rs. 50. To the middle class agriculturist, this means an additional burden on his cultivation.

MR S KRISHNA AIYAR: May I ask whether Government have not received far greater number of applications for the new planting rights than they can possibly grant?

MR. PUTHUPALLY S. KRISHNA PILLAI: There are 55 lakhs of people in the State and every one of these 55 lakhs claims all the privileges of citizenship, and the Government have been meting out justice to all of them. There are a very large number of applications already received but, Government have never felt any insurmountable difficulty in such cases. Individuals may feel such difficulty, but not Government. In such matters, certainly, no hard and fast rule is possible.

MR. PULIYCOR T. P. VELAYUDHAN PILLAI: May I have an idea of the number of applications received by the Land Revenue Commissioner as per his Press Communique?

MR. PUTHUPALLY S KRISHNA PILLAI: Nearly seven thousand.

MR. S. KRISHNA AIYAR: May I ask whether more than seven thousand have not applied?

MR. PUTHUPALLY S. KRISHNA PILLAI: About an hour back I was informed that the number had gone up to seven thousand and that the extent of land applied for is about 60 thousand acres and so far.

MR. P. SIVARAMA PILLAI: I suppose it would not exceed the area of Travancore (*laughter*).

MR. PUTHUPALLY S. KRISHNA PILLAI: The Land Revenue Commissioner will be in a position to give accurate figures; I am just explaining the position which the Government have taken up in the matter.

As I said, Government are in a position to mete out justice between man and man.

Now, 6400 acres is the total extent available for the whole of India for fresh planting of rubber. That figure has been arrived at a five per cent basis. Travancore owns 97 thousand odd acres of rubber lands, so that Travancore is entitled to 4,800 acres roughly. Already the Committee have assigned rights to the extent of 1500 and odd acres

[Mr. Puthupally S. Krishna Pillai.]

to 1332 estate owners and 29 non-owners who have paid for the rights of estate owners, namely, to assignees of estate owners. That is the present situation. Government have to deal with the remaining extent of 3300 and odd acres not covered by the permits already issued by Rubber Licensing Committee. Government have framed rules on the matter.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Are we not entitled to ring some land under experimental cultivation of rubber?

MR. PUTHUPALLY S. KRISHNA PILLAI: These experiments, I may inform the Hon'ble member, are not intended to be carried on by the ordinary persons; that is why so far no permit has been granted on any appreciable scale in Travancore for experimental cultivation of rubber.

Now, Sir, the time is come when we have to inform the Government of India as to the total extent of rubber land which we are prepared to cultivate during 1939-40. The matter is engaging the attention of the Government.

In regard to the question raised by Mr. Krishna Iyer about the handing over of the permits at Arukutty I agree that the present wording in the Bill is capable of such an interpretation; but that can be rectified by the Select Committee.

Another question was raised as to whether the Travancore Government have an idea of constituting its own Committee for the purpose of controlling this matter. As at present advised, Government have absolutely no such idea. In the Rubber Control Act mention is made of a Committee, and such a Committee has been defined as a Committee nominated by Government. Now, the Indian Rubber Licensing Committee exercises jurisdiction over Travancore also; I do not mean to say that that Committee has powers of a statutory body over Travancore in fact, the Government of India exercise no statutory powers over any Indian State, so that, a Committee constituted under a British Indian Act will not be competent to exercise any control in Travancore unless such Committee is adopted by legislation enacted here. That is how we have adopted the Indian Rubber Licensing Committee as our own.

But, the Committee should be under the control of somebody, although we have adopted it. In the absence of a provision in our Statute exempting the Rubber Licensing Committee from the jurisdiction of the Travancore Courts, the Committee was being harrassed by litigation by our people. To avoid that, provision has now been made that the Committee in exercising right under the statute will be exempt from suits filed in our courts. That does not mean that the Committee can function as an autocratic body without having any controlling authority above it.

MR. S. KRISHNA AIYAR: Is the member aware that the Government of India is exercising rights in resptof Tea lands in Travancre?

MR. PUTHUPALLY S. KRISHNA PILLAI: Government have never understood that matter in that light; they are aware that complaints have been made by tea estate owners. The British Indian tea estate owners have the right to move their High Court and the further right to move the Government of India: But the tea or rubber estate owners in Travancore do not appear to possess any such right.

MR. S. KRISHNA AIYAR: May I inform the Legal Remembrancer that one such case is pending before the Central Government.

MR. PUTHUPALLY S. KRISHNA PILLAI: I thank the honourable member for the information.

I was submitting, Sir, that the Indian Rubber Licensing Committee is to be exempted from the jurisdiction of the Courts in Travancore. All the same, to prevent that Committee from functioning as an autocratic body, provision is now sought to be made enabling the Government to deal with fit cases. Government will have the power to rectify the mistakes, if any, committed by the Committee. Hence the provision. Apart from this, Government have no idea of constituting a separate Committee for Travancore. The present question is not about the rights of Travancorean estate owners as compared with those in the rest of India; it is an All-India question that we are now dealing with. Therefore, although, considering the vast extent of land already under rubber cultivation in Travancore, Travancore has an importance in the matter which no other State in India has, the question of our relative position does not now arise.

With these words I commend the Bill for the acceptance of the House. All necessary changes can be made at the Select Committee.

The motion that the Bill be read in the Assembly was put to vote and carried.

SECRETARY: The title of the Bill shall be "The Travancore Rubber Control Bill".

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that the Bill be referred to a Select Committee composed of:—

Messrs.
S. Krishna Aiyar,
J. W. Tolson,
J. E. A. Pereira,
K. C. Karunakaran,
K. G. Govindan
M. G. Kesava Pillai,
G. Velu Pillai,
Dominic Joseph,
Joseph Vithayathil
Chandamiah Sahib,
N. John Joseph,
Kochukora Tharakan; and myself.

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I second it.

MR. PUTHUPALLY S. KRISHNA PILLAI: The Committee to report within two months.

The motion was put to vote and carried.

THE TRAVANCORE MAINTENANCE ORDERS ENFORCEMENT BILL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to introduce the Travancore Maintenance Orders Enforcement Bill. Sir, I may be permitted to state the principle underlying the Bill. In doing so I have only to refer the Honourable members to the Statement of Objects and Reasons attached to the Bill.

The Bill has only 12 clauses of which three or four alone contain the important provisions.

At present maintenance orders passed by Criminal Courts in one State or Province are not enforced in the neighbouring States or Provinces. Honourable members must be aware of the fact that, orders of maintenance are passed under Section 366 of Crl. P. C. Such orders are executable only within the State. In some cases it happens that the person against whom such an order is passed, although he might happen to be within the State while the order is passed, changes his residence or place of occupation to some place outside Travancore, in British India or elsewhere. In such cases, the order is to be executed in British India. In the absence of inter Governmental arrangement and a definite statutory provision for that, it is not possible; parties are forced to obtain Civil Court decrees, to transfer them to British Indian Courts. Even then, objection is raised there that these decrees are foreign decrees, and the party has to prove in British India that the judgment and the decree are valid and have to be enforced, or a fresh suit has to be filed there and a fresh decree obtained. This is our position with regard to British India and Cochin.

It has been agreed at the Hague Convention that all parties to the agreement should take up the question of enacting suitable legislative measures for the purpose of enforcing maintenance orders passed in one country against persons not resident there for the time being. The Government of India are a party to that agreement and have already passed a legislation to that effect. Various other countries have also enacted similar measures. It is now a few years since British India passed a legislation on the matter. They have provided that the benefits of that measure will be available only to those who themselves undertake similar legislation in their own land. The present Bill is our attempt to enact a corresponding law here. I beg to move that the Bill be read in the Assembly.

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I second it.

The motion was put to vote and carried.

SECRETARY: The title of the Bill shall be "The Travancore Maintenance Orders Enforcement Bill."

MR. PUTHUPALLY S. KRISHNA PILLAI: I beg to move that the Bill be referred to a Select Committee consisting of the following gentlemen :—

Messrs.
S. Chattanatha Karayalar,
K. R. Narayanan,
Janardhanan Nair,
S. Govinda Pillai,
Padiyara Joseph Kunju.
Kottalil P. Abraham,
N. Narayana Kurup,
P. S. Mahomed
Kunju Panickar,
N. R. Krishnan,
Vivekanandam; and myself

The Select Committee to report in three months.

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: I second it.

The motion was put to vote and carried.

The House adjourned at 3·28 P. M.

Trivandrum,
24th June 1939.

A. GUNAMONY,
Secretary to the Sri Mulam Assembly.

PROCEEDINGS
of

THE TRAVANCORE SRI MULAM ASSEMBLY.

SECOND ASSEMBLY.

FOURTH SESSION.

Monday, the 26th June 1939/12th Mithunam 1114.

The Assembly met again in the Legislative Chamber at Eleven of the clock, with the President in the Chair.

NEW MEMBERS.

The following members took the oath and signed the Rolls.

(1) Mr. A. Gopala Menon, (*Director of Public Instruction*).
(2) Mr. M. P. Joseph, (*Excise Commissioner.*)
(3) Mr. P. G. Narayanan Unnithan (*Secretary to Government.*)

QUESTIONS AND ANSWERS.

Abolition of the Traffic Department.

105 *MR. K. P. KOCHUKORA THARAKAN (*Kunnatnad* cum *Parur*): Will the Government be pleased to state:

(*a*) whether the Traffic Branch of the Police Department has been abolished;

(*b*) if so, the reasons therefor;

(*c*) the appointments to which Traffic Inspectors of the Traffic branch, possessing engineering qualification such as Motor Engineering etc, have been posted now; and

(*d*) whether any of the Traffic Inspectors have been taken to the Transport Department, if not, the reasons therefor?

KHAN BAHADUR G. S. ABDUL KARIM (*Inspector General of Police*):

(*a*) The Traffic branch of the Police Department has not been abolished. The Traffic branch *as a separate unit* has however been abolished and the Police work of the branch has been placed under the District Superintendents of Police.

(*b*) This does not arise in view of the answer to part (*a*).

(*c*) Three Traffic Inspectors who were found to be competent for station work have been posted to the stations and the remaining four have been posted in the Districts of Trivandrum, Quilon and Kottayam. One Traffic Inspector has been posted additionally to the Trivandrum town.

[Rao Bahadur G. S. Abdul Karim.]

(*d*) No. Their services are required in the Police Department.

MR. K. P. KOCHUKORA THARAKAN : നാലുപേർക്ക് സ്റ്റേഷൻചാർജ് കൊടുത്തു എന്നു പറയുന്നു. ബാക്കിയുള്ളവർ അതിനു യോഗ്യരല്ലെന്നാണോ വിചാരിക്കേണ്ടതു്?

KHAN BAHADUR G. S. ABDUL KARIM : The effect of the reorganisation scheme was not like what the member had said just now. One of the Inspectors was posted to the Trivandrum Town. Two others were found suitable and put in charge of Kottayam and Quilon Reserves.

MR. M. L. JANARDHANA PILLAI : May I know from the member whether these changes have brought about a decrease in expenditure or increase, in respect of the Police Department?

KHAN BAHADUR G. S. ABDUL KARIM : This reorganisation scheme has effected a recurring decrease of our Rs. 15,000 per annum in the Police Department. My effect in bringing about a further reduction in the cost of the administration has been a good deal ruptured by the subversive movement carried on by the State Congress. On account of that the expenditure has nearly gone up to an extent of about Rs. 3 lakhs.

PRESIDENT : The honourable member will please address the Chair.

MR. M. SIVATHANU PILLAI (*Thovala* cum *Agastiswaram*) : May I know from the member whether as a result of the re-organisation scheme the effect is a gain to Government or a loss?

KHAN BAHADUR G. S. ABDUL KARIM : It has resulted in absolute gain to Government.

MR. M. SIVATHANU PILLAI : May I know the amount of gain that has resulted to Government?

KHAN BAHADUR G. S. ABDUL KARIM : Rs. 15,000, Sir.

PRESIDENT : The honourable member must address the Chair.

Apprentices to learn the work of timber treatment.

106. ***MR. K. NARAYANAPERUMAL NADAR :** (*Tovala* cum *Agastiswaram*) : Will the Government be pleased to state :

(*a*) the number of candidates who have applied to be apprentices to learn the work of timber treatment under the Director of Development as per the notification in the Gazette dated 22nd November 1938;

(*b*) the number selected from them for the apprentice course; and

(*c*) whether they will be pleased to lay on the table a statement, by caste, of those so selected, with the qualification of each?

MR. P. G. NARAYANAN UNNITHAN (*Secretary to Government*):

(*a*) 151.

(*b*) 2.

(*c*) *The statement is laid on the table.

Lathi charge on Arts College Students.

107 ***MR. K. NARAYANAPERUMAL NADAR**: Will the Government be pleased to state:

(*a*) whether there was a lathi charge made on students inside and outside the Arts College premises in the month of September 1938; and

(*b*) the reasons for so doing?

KHAN BAHADUR G. S. ABDUL KARIM:

(*a*) No.

(*b*) This does not arise in view of the answer to part (*a*).

MR. K. NARAYANAPERUMAL NADAR: May I know from the member whether a posse of Police Constables entered the Arts College compound and made a lathi charge thus injuring one Mahomedan student *viz.*, Basheer in the month of September?

KHAN BAHADUR G. S. ABDUL KARIM: The answer needs a long statement and I am prepared to give it. On a certain day in the Arts College two students *viz.*, Messrs. Basheer and Stephen were creating great trouble. The information reached the Police from the Principal of the College. We gave instructions to our Officers and men not to enter the College and watch the situation from outside. They were staying outside. The other students of the College were incited by these two students and were causing great trouble. They began to pelt stones at the College windows and doors with the result that some of them were broken. The Principal of the College requested the Police to enter the premises and to persuade the students from creating any trouble. That had no effect on the students. The students were causing some annoyance, and injury to our men and officers and in the face of great provocation they were remaining quiet. It was one of those occasions when the Police staff showed manly restraint in spite of the attack from the students.

MR. K. NARAYANAPERUMAL NADAR: It is stated in the answer that no lathi charge was made. Is that true?

KHAN BAHADUR G. S. ABDUL KARIM: There was no lathi charge.

MR. K. NARAYANAPERUMAL NADAR: Not at all in the College?

KHAN BAHADUR G. S. ABDUL KARIM: Absolutely not.

MR. K. NARAYANAPERUMAL NADAR: Then may I know why it was reported in the newspapers that a lathi charge took place in the Arts College?

PRESIDENT: Order, order. No member should quote newspapers unless he takes responsibility for the statement he utters. Does the honourable member take responsibility for stating that there was a lathi charge?

**Vide* Appendix I page 433.

MR. K. NARAYANAPERUMAL NADAR: I can promise to produce that particular newspaper which stated about the lathi charge.

PRESIDENT: The honourable member is an experienced member of the House. He knows that statements in newspapers can never be referred to in this House or in any other Legislature in the world as authentic information. Unless the honourable member is able to take responsibility for the assertions contained in the newspapers, I cannot allow him to put such statements. Does the honourable member bind himself for such statements?

MR. K. NARAYANAPERUMAL NADAR: To some extent I can.

PRESIDENT: Responsibility knows no degrees. Does the honourable member take responsibility for his statements?

MR. K. NARAYANAPERUMAL NADAR: No, Sir.

MR. M. SIVATHANU PILLAI: The member answered that in the face of great provocation his officers remained quiet. May I know whether there was any provocation caused by the students and if so what was it?

PRESIDENT: I am afraid the honourable member is going too far a field.

MR. M. SIVATHANU PILLAI: The official member answered that in the face of provocation his officers remained quiet. That was a definite statement made by him. In view of that I would like to know from the member—

PRESIDENT: Supplementary questions are necessary for the purpose of elucidating the answers in so far as they pertain strictly to the question in issue. Any further wandering beyond the scope of it is likely to lead to difficulties.

MR. M. SIVATHANU PILLAI: May I know what was the reason for the Police people entering the premises of the College? Was it not at the request of the Principal?

KHAN BAHADUR G. S. ABDUL KARIM SAHIB: The students threw stones at the windows of the College and smashed some of them. The Principal of the College found it impossible for him to set right the students. Naturally he wanted the aid of the Police people. The Police who where staying outside till then went in at the specific request of the Principal of the College. They requested the students to enter their classes and persuaded them to remain quiet. They were able to restore order. In this connection I may say that the Arts College students behaved remarkably well after that particular incident.

Officers in the Account Office.

108. ***MR. K. P. KOCHUKORA THARAKAN**: Will the Government be pleased to lay on the table:

(*a*) a statement, by caste, of the officers in the Account Office;

(*b*) a statement, by caste, showing the number of persons taken to the Account Office from other departments during 1114, the respective departments from which they were taken, and their pay before and after they were taken to the Account Office; and

(c) a statement, by caste, of the persons newly recruited to the Account Office during 1114 showing their scale of pay and their present pay?

MR. M. GOVINDA PILLAI (*Financial Secretary to Government*):

(a) and (b) *The statements required by the member are placed on the table.

(c) Only one person, excepting menials, has been recruited for appointment this year. He is a Jacobite Christian and has been appointed as an attender in the scale of Rs. 15-1/3-20. He is now in receipt of a salary of Rs. 15 per mensem.

A statement of appointments directly made by Government is also placed on the table.

Promotions in the Account Office.

109. *MR. K. P. KOCHUKORA THARAKAN: Will the Government be pleased to state:

(a) whether the practice of giving appointments and promotions in the Account Office in the proportion of one under-graduate to three graduates has been changed and the proportion of two under-graduates to three graduates has been adopted; if so, will the Government be pleased to lay on the table a copy of the G. O. sanctioning that change;

(b) if such a change has been effected, whether it is in the Account Office alone; and if not, in what all departments; and

(c) if such a change has been effected in the Account Office alone, the special reasons for that?

MR. M. GOVINDA PILLAI (a) It is only promotions and not appointments that have been regulated in the proportion of 1 undergraduate to 3 graduates This rule has not been changed. But a concession has been allowed to the undergraduate auditors of the Account Office who had, on the date of the issue of orders, completed not less than 20 years' service in the Accounts Department for purposes of promotion to the Rs. 75-100 grade and 15 years for the Rs. 40-70 grade. Under this concession, the proportion has been fixed at 3 graduates for every 2 undergraduates for promotion to the Rs. 75-100 grade and 2 graduates for every undergraduate for promotion to the Rs. 40-70 grade.

† A copy of the G. O. is placed on the table.

(b) The concession has been allowed only in the Accounts Department.

(c) The reason for restricting this concession to the Accounts Department is that, among other things, graduates and undergraduates are entrusted, more or less, with the same kind of work in the Account Office. Moreover, there are in the Account Office at present a few undergraduate auditors who by long service have deserved special treatment. Undergraduates are not now being recruited to the Account Office, so that when the few existing undergraduates have retired from service the above proportion will automatically vanish in that office.

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* *Vide* Appendix II *a*, *b* and *c* pages, 433, 434 and 435.
† *Vide* Appendix III page 436.

MR. K. P. KOCHUKORA THARAKAN: ഗ്രാഡ്വേററ്സിനും അണ്ടർ ഗ്രാഡ്വേററ്സിനും അക്കൌണ്ടാഫീസിൽ ഒരേ ജോലിയാണെന്നു പറയുന്നു. എന്നാൽ ശമ്പളക്കൂടുതൽ കൊടുത്തു ബി. ഏ. ക്കാരെ നിയമിക്കേണ്ട ആവശ്യമെന്താണ്?

MR. M. GOVINDA PILLAI: The appointment of graduates does not involve any additional expenditure. There is a schedule of scales of pay sanctioned for every department and the appointments, whether it be of a graduate or an undergraduate, will only be in accordance with the sanctioned scale.

MR. K. R. NARAYANAN (*Vaikom cum Kottayam*): ഇപ്പോൾ ബി. ഏ. ക്കാരായി അക്കൌണ്ടാഫീസിൽ എത്രപേരുണ്ടെന്നു പറയാമോ?

MR. M. GOVINDA PILLAI: I am not in possession of those figures.

MR. K. R. NARAYANAN: അവരുടെ കാസ്റ്റ്‌വാർ സ്റ്റേറ്റുമെൻറ് എങ്ങിനെ എന്നു പറയാമോ?

MR. M. GOVINDA PILLAI: The caste war statement is not at present available. I shall prepare it if the member asks for it next time.

Admission to the tunnel area at Pallivasal.

110. ***MR. K. P. KOCHUKORA THARAKAN:** Will the Government be pleased to state:

(*a*) whether persons are freely admitted to the tunnel area and the area adjacent to it, of the Pallivasal Hydro-electric Scheme;

(*b*) whether gates or guards have been provided for preventing the entry of any one; and

(*c*) whether any one of the visitors to the tunnel during Medom 1114, fell into the well of the tunnel and died?

MR. P. G. NARAYANAN UNNITHAN: (*a*) No.

(*b*) Yes.

(*c*) Yes. One died.

MR. KOTTALIL P. ABRAHAM: With reference to part (*c*) may I know how the person died?

MR. P. G. NARAYANAN UNNITHAN: One man who was employed as contractor in the tunnel work for some time happened to go up to the surge chamber. He went there without any light. Unfortunately he shipped and fell down the surge shaft. It is over 50 ft. deep. As soon as the accident happened he was removed to the Hospital. He succumbed in the end.

MR. M. SIVATHANU PILLAI: May I know whether there is any provision for keeping out the visitors from visiting that area?

MR. P. G. NARAYANAN UNNITHAN: Visitors are not allowed to enter the tunnel area.

PRESIDENT: Has any step been taken afterwards to prevent people from entering the tunnel area?

MR. P. G. NARAYANAN UNNITHAN: Yes, Sir.

PRESIDENT: What is that?

MR. P. G. NARAYANAN UNNITHAN: There is a guard provided to see that no visitors get in there. A gate is also being put up.

Recruitment of Ezhavas to the Magistracy.

111. ***MR. K. MADHAVAN** (*Chirayinkil* cum *Nedumangad*): Will the Government be pleased to state:

(*a*) the date on which the last Ezhava was recruited to the Magistracy;

(*b*) the office from which he was so recruited; and

(*c*) the date on which the last Ezhava was recruited to the Magistracy from the Secretariat?

MR. M. K. NILAKANTA AIYAR (*Chief Secretary to Government*):

(*a*) 5-8-1110.

(*b*) Divisional Treasury, Trivandrum.

(*c*) 25-11-1105.

MR. K. MADHAVAN: May I know the number of vacancies in the Magistracy that arose in 1110?

MR. M. K. NILAKANTA AIYAR: I claim notice.

MR. K. R. NARAYANAN: സിക്രട്ടേറിയററിൽ ൧൧൦൫ മുതൽ ൧൧൧൪ വരെയുള്ള നിയമനങ്ങൾ എത്രയാണെന്നു പറയുവാൻ ദയവുണ്ടാകുമോ ?

MR. M. K. NILAKANTA AIYAR: I claim notice.

Drowning tragedy in the Vembanad lake.

112 ***MR. S. NARAYANA PILLAI** (*Quilon* cum *Kottarakara*): Will the Government be pleased to state:

(*a*) whether a drowning tragedy took place in the Vembanad lake on 22-9-1114; and

(*b*) whether any enquiry has been made into the incident and if so the result thereof?

KHAN BAHADUR G. S. ABDUL KARIM: (*a*) Yes.

(*b*) Yes. Crime No. 82/14 was registered in Shertalai Station and investigation has proved that it was purely an accident.

MR. S. NARAYANA PILLAI: May I know the number of persons that were in the boat?

KHAN BAHADUR G. S. ABDUL KARIM: 23.

MR. S. NARAYANA PILLAI: How many men were there in the boat?

KHAN BAHADUR G. S. ABDUL KARIM: There were 18 adults, 1 child and 4 crew.

MR. S. NARAYANA PILLAI: May I know the number that actually died?

KHAN BAHADUR G. S ABDUL KARIM: The information is that two actually died.

MR. N. NARAYANA KURUP (*Ambalapuzha* cum *Shertala*): What was the circumstance under which the boat was drowned?

KHAN BAHADUR G. S. ABDUL KARIM: The boat named Alfa belonging to one Mr. Abraham left Ernakulam at about 5 P. M. on that fateful day. When it passed Vaikom it was 10 P. M. 4 additional persons got in from Vaikom. A little after passing Vaikom there was a heavy storm. The boat was affected to a great extent and it was tossing this side and that side. It was almost in a perilous condition in the midst of storm. A certain drunkard who got in at Vaikom fell from it and he is yet to be traced. In the course of the tempestuous weather the accident happened. One of the victims was taken to the Kottayam Hospital and was treated there.

MR. N. NARAYANA KURUP: May I know the number of passengers in the boat from the starting point?

KHAN BAHADUR G. S. ABDUL KARIM: 14.

MR. M. SIVATHANU PILLAI: Was any check done in the intermediate stations?

KHAN BAHADUR G. S. ABDUL KARIM: I am not aware of that.

MR. K. R. NARAYANAN: വൈക്കത്തുനിന്നും പുറപ്പെട്ടപ്പോൾ ബോട്ടിൽ എത്രപേരുണ്ടായ് രുന്നു ?

KHAN BAHADUR G. S. ABDUL KARIM: On a point of order. Whenever this gentleman comes to me with certain recommendations he talks in English and now he puts interpellations in Malayalam.

PRESIDENT: In this House the honourable members can make their own choice either to speak in Malayalam or Tamil or in English. So far as I know, in this House this honourable member has chosen to speak in Malayalam and many other honourable members speak in other languages. So far as this House is concerned that practice is recognised.

MR. K. R. NARAYANAN: വൈക്കത്തുനിന്നും ബോട്ടു പുറപ്പെട്ടപ്പോൾ ബോട്ടിൽ എത്രപേരുണ്ടായിരുന്നു ?

KHAN BAHADUR G. S. ABDUL KARIM: 18 adults, 1 child and 4 crew.

MR. K. R. NARAYANAN: ആ ബോട്ടിനു കൊടുത്തിരുന്ന ലൈസൻസ് അനുസരിച്ച് അപ്പോൾ ഓവർലോഡ് ആയിരുന്നോ ?

KHAN BAHADUR G. S. ABDUL KARIM: I am not aware of that. I shall ask Mr. Truscott about it.

MR. M. SIVATHANU PILLAI: It is answered in the question that an investigation was carried on. The case has been registered as crime No. 82/14. Then, How can the member say that he was not aware of that?

KHAN BAHADUR G. S. ABDUL KARIM: The case was fully investigated by the Police and the P. W. Department as well as the local First Class Magistrate and the Additional District Magistrate, Alleppey.

MR. M. SIVATHANU PILLAI: We are concerned with the investigation of the Police Department. Was it found out that there was any overloading in the boat?

KHAN BAHADUR G. S. ABDUL KARIM: No, Sir.

Sessions Cases.

113. *MR. P. NARAYANA PILLAI (*Mavelikara* cum *Kunnattur*): Will the Government be pleased to state :

(a) the number of Sessions Cases tried in each of the Sessions Courts in the State from Edavom 1113 to Meenam 1114 ;

(b) the number of cases convicted ; and

(c) the number of cases acquitted in each of the Courts ?

MR. PUTHUPALLI S. KRISHNA PILLAI (*Legal Remembrancer*) : (a) (b) and (c). *A statement giving the required details is laid on the table.

Board of conciliation of labour disputes.

114. *MR. K. C. KARUNAKARAN (*Nominated*) : Will the Government be pleased to state :

(a) when the Board of Conciliation of Labour Disputes in the Mats and Matting Industry was started ; and

(b) when the Board is expected to complete its work and submit its report.

MR. P. G. NARAYANAN UNNITHAN : (a) On the 20th December 1938.

(b) By the 15th July 1939.

Constitution of a Labour Department in the State.

115. *MR. S. NARAYANA PILLAI : Will the Government be pleased to state whether they have taken any steps, and if so what for the constitution of a Labour Department in the State ?

MR. P. G. NARAYANAN UNNITHAN : The matter is under the consideration of Government.

Thottappalli Bridge.

116. * MR. JOSEPH VITHAYATHIL (*Kunnatnad* cum *Parur*) : Will the Government be pleased to state :

(a) whether they have enquired into the case of the collapse of the Thottappally Bridge ;

(b) what was the cause of the collapse of the bridge ; and

(c) whether the collapse has caused any loss of human life ?

MR. P. G. NARAYANAN UNNITHAN : (a) Yes.

(b) Two boats supporting one end of the bridge suddenly gave way due to some unknown reason.

(c) No.

MR. N. NARAYANA KURUP : May I know from the member whether it was not due to the rottenness of a plank at the bottom of the boat that the bridge collapsed ?

MR. P. G. NARAYANAN UNNITHAN : That is perfectly right.

MR. N. NARAYANA KURUP : Then, may I know why it has been stated in answer to (b) that the bridge suddenly gave way due to some unknown reason ?

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*Vide Appendix IV.

MR. P. G. NARAYANAN UNNITHAN: How the plank gave way is unknown and hence the answer.

MR. N. NARAYANA KURUP: May I know whether the boat was not examined at the time of loading?

MR. P. G. NARAYANAN UNNITHAN: At first it was in good condition. Otherwise it could not have floated.

MR. K. P. KOCHUKORA THARAKAN: അതിന്റെ കാരണത്തെപ്പറ്റി ഗവൺമെന്റിൽനിന്നും അന്വേഷണം നടത്തിയില്ലേ ?

MR. P. G. NARAYANAN UNNITHAN: അന്വേഷിച്ചതിന്റെ ഫലമായിട്ടാണ് ഇങ്ങനെ കണ്ടുപിടിച്ചത്. പാലത്തിന്റെ സാമാനം കയറ്റിയശേഷം അടിയിലുള്ള പലക ഇളകിപ്പോയതാണ്.

MR. K. P. KOCHUKORA THARAKAN: അതിനെപ്പറ്റി അന്വേഷിക്കാമെന്ന് ഇവിടെ പറഞ്ഞിട്ടുണ്ട്. ആ അന്വേഷണത്തിന്റെ ഫലം എന്തായി ?

MR. P. G. NARAYANAN UNNITHAN: ആ അന്വേഷണത്തിനാലാണ് അവിചാരിതമായി നടന്ന സംഗതിയാണെന്ന് തെളിഞ്ഞിട്ടുള്ളത്.

MR. M. SIVATHANU PILLAI: May I know whether the member is aware that it was answered last time by the Director of Development that it may reasonably be suspected to be a case of sabbotage?

MR. P. G. NARAYANAN UNNITHAN: Last time the Director of Development did not answer the question.

MR. M. SIVATHANU PILLAI: May I know whether it was not answered that it may reasonably be suspected to be a case of sabbotage?

MR. P. G. NARAYANAN UNNITHAN: It was not answered so.

MR. R. SIVARAMAN NAIR (*Tiruvalla*): May I know who conducted the enquiry?

MR. P. G. NARAYANAN UNNITHAN: The Police and the P. W. Department.

MR. R. SIVARAMAN NAIR: May I know who was in charge of the construction work.

MR. P. G. NARAYANAN UNNITHAN: The Director of Development was in charge of the construction work.

Stores Purchase Committee.

117 *MR. R. SIVARAMAN NAIR: Will the Government be pleased to state:

(*a*) who is the present Secretary of the Stores Purchase Committee;

(*b*) what are the functions of the Secretary of the Stores Purchase Committee; and

(*c*) whether the present incumbent is in charge of any other department; what are his other functions, if any?

MR. M. K. NILAKANTA AIYAR : (*a*) The member is referred to page 299 of the quarterly Civil List corrected up to the 1st Edavam 1111.

(*b*) To be in charge of the office of the Committee, to convene meetings of the committee and to sign all communications for and on behalf of the Committee.

(*c*) As Controller of Stationery and Printing he is in charge of Stationery and Printing Departments ; he is also Professor of Applied Physics in the University of Travancore.

MR. R. SIVARAMAN NAIR : May I know whether he had any experience of printing and stationery before hand ?

MR. M. K. NILAKANTA AIYAR : Yes, he had.

MR. R. SIVARAMAN NAIR : May I know what it was ?

MR. M. K. NILAKANTA AIYAR : When he was in England he was working in some of the presses.

MR. R. SIVARAMAN NAIR : May I know what were his duties when he was first appointed in the Travancore Service ?

MR. M. K. NILAKANTA AIYAR : He was appointed in the University as Director of Technology.

MR. R. SIVARAMAN NAIR May I know who was in charge of printing and stationery before he was appointed ?

MR. M. K. NILAKANTA AIYAR : Mr. P. G. Narayanan Unnithan.

MR. R. SIVARAMAN NAIR ; May I know why this change was made ?

MR. M. K. NILAKANTA AIYAR : In the interests of public service.

Pallivasal Hydro-Electric Scheme.

118 ***MR. R. SIVARAMAN NAIR ;** Will the Government be pleased to state :

(*a*) when the Pallivasal Hydro-Electric Scheme will begin to supply power ; and

(*b*) the total amount of money now spent on the Scheme ?

MR. P. G. NARAYANAN UNNITHAN : (*a*) In December 1939.

(*b*) Rs. 1,13,65,471-6-2.

Grant-in-aid to Ayurveda Vaidya Sala.

119 ***MR. S. NARAYANA PILLAI :** Will the Government be pleased to lay on the table a list of Ayurveda Vaidya Salas for which grants were newly sanctioned during the last two years, together with the names of the Vaidyans, the communities to which they belong and the amount of grant sanctioned to each ?

MR. P. PARAMESWARAN PILLAI (*Secretary to Government*): The *list is laid on the table.

* *Vide* Appendix V.

MR. S. NARAYANA PILLAI: May I know whether any grant has been awarded to any Vaidyasala in Shertallai and Ambalapuzha taluks this year?

MR. P. PARAMESWARAN PILLAI: No, Sir.

MR. E. P. VARGHESE: May I know whether there was any application for it?

MR. P. PARAMESWARAN PILLAI: There were applications from several taluks.

MR. E. P. VARGHESE: My question is whether there were applications from Shertallai and Ambalapuzha taluks?

MR. P. PARAMESWARAN PILLAI: Yes, Sir.

MR. E. P. VARGHESE: May I know the number?

MR. P. PARAMESWARAN PILLAI: I claim notice.

Vaidyasalas conducted by members of Thandan Community.

120 * **MR. S. NARAYANA PILLAI:** Will the Government be pleased to state:

(*a*) whether there is any *Vaidyan* from the *Thandan* or *Vaniyan Community* enjoying grant from Government;

(*b*) whether any member from any of the above communities has been running any *Vaidya Sala* recognised by Government and, if so for how long a period such recognition has been in force;

(*c*) whether any Vaidyan from either of the said communities has at any time been given grant and, if so, when; and

(*d*) whether there is a Visha Vaidya Sala in Kilikolloor, Quilon and the number of patients treated there for snake bite during the last three years?

MR. P. PARAMESWARAN PILLAI: (*a*) No.

(*b*) Yes; since 1104.

(*c*) Yes; one, from the Thandan community; for a period of over $2\frac{1}{2}$ years from 1106 to 1109.

(*d*) Yes; on an average of 700 patients per year.

Kattathurai Marma Vydiasala.

121 * **MR. C. JEBAMONY NADAR** (*Kalkulam cum Vilavankod*): Will the Government be pleased to state:

(*a*) the number of patients treated by the above institution during each of the years 1111 to 1113; and

(*b*) whether Government have approved of the recommendation of the Director, to conduct that *Vydiasala* as a hospital?

MR. P. PARAMESWARAN PILLAI:

(*a*) 1111—6512 patients
1112—6945 ...
1113—7121 ...

(*b*) The Director has not made any such recommendation.

MR. M. SIVATHANU PILLAI: May I know the conditions under which the Director may recommend the conversion of the Vaidyasala nto a Hospital?

MR. P. PARAMESWARAN PILLAI: The conditions are laid down in the rules. The Director may recommend when he is pleased to do so.

MR. M. SIVATHANU PILLAI: I want to know what are the conditions under which the Director may think it fit to recommend for the conversion of the Vaidyasala into a hospital?

Sir, I wish to know whether it is open to the member in charge of this interpellation to say by way of an answer that the Director may recommend when he is pleased. Is he entitled to say like that?

MR. P. PARAMESWARAN PILLAI: It, is open to the Director to recommend when he so chooses It is not obligatory on him that he should recommend the conversion of every Vaidyasala into a hospital

MR. M. SIVATHANU PILLAI: Sir, I wish to know whether he is entitled to answer like that to a member of this honourable House.

PRESIDENT: The meaning sought to be conveyed is that it is discretionary with the Director of Ayurveda to make certain recommendations. It is not incumbent on him to make the recommendation. It is left to his discretion on a review of the consideration of the particular case. That, I take, to be the honourable member's idea.

MR. P. PARAMESWARAN PILLAI: Yes, Sir.

MR. M. SIVATHANU PILLAI: May I know, Sir, whether the member can use his discretion in the choice of such expression.

PRESIDENT: Appropriateness of expression or felicity of language is a matter which is more or less individual and peculiar to people's personalities. Honourable members are entitled to object to impoliteness or rudeness. The choice of expression is often a matter like the shape of one's own nose which people may not be able to command or regulate.

MR. M. SIVATHANU PILLAI: May I know what are the conditions on which the Director may think it fit to recommend the conversion of a Vaidyasala into a hospital?

MR. P. PARAMESWARAN PILLAI: It is left to his discretion.

MR. M. SIVATHANU PILLAI: I would like to know under what condition he will exercise his discretion to recommend for the conversion of the Vaidyasala into a hospital.

MR. P. PARAMESWARAN PILLAI: There are certain rules prescribed.

PRESIDENT: If the honourable member knows the rules he can expound them.

MR. P. PARAMESWARAN PILLAI: I know the rules in a general manner. Sir, I can answer the question.

MR. M. SIVATHANU PILLAI: May I know whether the number of patients treated in a Vaidyasala does not count for its conversion into a hospital?

MR. P. PARAMESWARAN PILLAI: That is one of the conditions.

MR. M. SIVATHANU PILLAI: Then, may I know why this Vaidyasala was not recommended to be converted into a hospital?

MR. P. PARAMESWARAN PILLAI There are several other conditions, as well. The necessity for the hospital in the taluk, the proficiency, standing and reputation of the Vaidyan concerned, the qualifications he has—all these things will have to be taken into consideration.

MR. M. SIVATHANU PILLAI: May I know why in view of the large number of patients treated in this Vaidyasala it is not recommended to be converted into a hospital?

MR. P. PARAMESWARAN PILLAI: The Director has not yet thought it fit to do so.

MR. M. SIVATHANU PILLAI: Is the member aware that in this Vaidyasala the number of patients treated is very much larger than those treated in Government hospitals?

MR. P. PARAMESWARAN PILLAI: No, Sir. For the information of the honourable member I may point out that there are only 3 grant-in-aid Ayurvedic hospitals in the whole State.

MR. M. SIVATHANU PILLAI: May I know the conditions under which those three grant-in-aid Vaidyasalas were converted into hospitals.

MR. P. PARAMESWARAN PILLAI: Conditions which satisfied the rules and on their commendation of the departmental head.

MR. M. SIVATHANU PILLAI: I wish to know what those conditions are?

MR. P. PARAMESWARAN PILLAI As already stated, the number of patients treated is one of the conditions. Some of the other conditions are the proficiency and standing of the Vydian concerned, the confidence of the public on him, his qualifications, the needs of the locality and the proximity of other medical institutions.

MR. T. C. KESAVA PILLAI: May I know whether there are not other Institutions in Central and South Travancore which deserve such grants?

MR. P. PARAMESWARAN PILLAI: There may be.

Transport Department.

122. ***MR. K. P. KOCHUKORA THARAKAN:** Will the Government be pleased to lay on the table a statement showing the receipt and expenditure of the Transport Department during the first six months of the year 1114?

MR. M. K. NILAKANTA AIYAR:

Receipts for the first half of 1114 = Rs. 373,823-4-15
Expenditure for the above period = Rs. 249,168-12-14.

Office of the Transport Superintendent.

123. ***MR. K. MADHAVAN:** Will the Government be pleased to state whether the office of the Transport Superintendent has been audited by the Account Office without previous notice?

MR. M. K. NILAKANTA AIYAR: No.

MR. K. MADHAVAN: May I know whether this office has ever been audited?

MR. M. K. NILAKANTA AIYAR: There is a staff of the Accountant Gentral's Office posted in the Transport Department and they are conducting concurrent audit.

MR. M. SIVATHANU PILLAI: So, is there no necessity for auditing this office?

MR. M. K. NILAKANTA AIYAR: No.

Representation from Toddy shop contractors.

124. * **MR. JOSEPH VITHAYATHIL** (*Kunnatnad cum Parur*): Will the Government be pleased to state:

(*a*) whether they have received representations from toddy shop contractors in the State relating to the loss they are put to on account of the distroying of tapping trees by political agitators;

(*b*) whether they have made any enquiry into the complaints of these contractors: if so, what is the result of that enquiry; and

(*c*) what steps, if any, they have taken to safeguard the interest of these contractors?

MR. M. P. JOSEPH (*Excise Commissioner*): (*a*) Yes.

(*b*) Yes. It was found that in certain cases the complaints were true.

(*c*) In deserving cases, the contractors were granted remission of kist.

MR. JOSEPH VITHAYATHIL: With reference to answer to part (*a*) May I know the extent of the relief given.

MR. M. P. JOSEPH: Rs. 3,007.

MR. JOSEPH VITHAYATHIL: May I know whether applications are pending?

MR. M. P. JOSEPH: There were several applications but they were considered and rejected.

MR. K. NARAYANAPERUMAL NADAR: May I know the names of those contractors?

MR. M. P. JOSEPH: I cannot give the names of contractors but I can give the names of those shops.

MR. K. NARAYANAPERUMAL NADAR: May I know the number of those shops,

MR. M. P. JOSEPH: 14.

Amalgamation of P. W. D. and Water Works Departments.

125 * **MR. M. KESAVA PANICKAR** (*Neyyattinkara cum Trivandrum*): Will the Government be pleased to state:

(*a*) whether eleven acting hands were relieved of their duties from the Water Works Department and none from the P. W. D., at the time of amalgamation of the P. W. D. and the Water Works Departments, dated 16-12-1938;

(*b*) if the answer to part (*a*) is in the affirmative, whether some persons so disbanded were seniors to some acting hands in the P. W. D; and

(*c*) if the answer to part (*b*) is in the affirmative, what are the reasons therefor?

MR. G. B. E. TRUSCOTT (*Chief Engineer*):

(*a*) Yes.

(*b*) & (*c*) The question of discharging the acting hands of the P. W. D., did not arise, as the amalgamation of the Water Works and Drainage Department with the P. W. D. had to be given effect to only after reducing the original strength of the staff of the Water Works and Drainage Department to the strength of the staff sanctioned for the various offices in the Water Works Section of the P. W. D.

MR. M. SIVATHANU PILLAI: May I know whether certain supervisors were relieved of their duties?

MR. G. B. E. TRUSCOTT: I cannot give a definite answer now. It is quite possible. Some were relieved and employed elsewhere.

Quarterly Civil List.

126 ***MR. C. JEBAMONY NADAR**: Will the Government be pleased to state; why the "Date of birth" column and the "Commencement of service" column in the current Quarterly Civil List are left vacant in the case of certain officers?

MR. M. GOVINDA PILLAI: *Date of birth.* The omission of entries in the column 'Date of birth' in certain cases is due to want of information and proof in regard to the date of birth of the officers concerned which have been called for. In the case of officers holding substantive gazetted appointments, officiating in another appointment, the date of birth is not entered against the officiating appointment, but only shown against their substantive appointment. Again in the case of Covenanted Officers and Officers appointed for limited periods, information in regard to date of birth is not called for, the same being unnecessary.

Commencement of service. This column is filled up only when the officer is confirmed in the cadre in which he is appointed.

Repatriation order of the Ceylon Government.

127 ***MR. P. NARAYANA PILLAI**: Will the Government be pleased to state:

(*a*) whether they have received any representations by the Travancoreans in Ceylon with regard to the repatriation order of the Ceylon Government is contemplating to put into effect;

(*b*) the probable number of Travancoreans that may be affected by that order:

(*c*) whether any steps have been taken by our Government with regard to this matter; and

(*d*) if so the nature of the steps taken?

MR. M. K. NILAKANTA AIYAR: (*a*) Yes; representations have been received from the Ceylon Malayali Mahajana Sabha.

(*b*) Government have no information.

(*c*) & (*d*) This Government have forwarded their views to the Government of India and sought to impress upon them the necessity to take effective measures for counter-acting the policy adopted by the Government of Ceylon which this Government recognise, affects prejudicially a large number of Travancoreans,

MR. P. NARAYANA PILLAI : May I know from Government whether they have got any idea of raising the duty on articles imported from Ceylon ?

PRESIDENT : Even if they have such an idea it cannot be divulged now because it will mean that people will make profit between now and the budget time.

MR. M. SIVATHANU PILLAI : May I know whether they have communicated the idea to the Ceylon Government?

MR. M. K. NILAKANTA AIYAR : The Dewan President has already referred to the matter on the opening day. I have nothing more to add.

MR. M. SIVATHANU PILLAI : I wish to know whether this Government has communicated the idea to the Ceylon Government?

MR. M. K. NILAKANTA AIYAR : No, Sir.

MR. KAINIKKARA M. PADMANABHA PILLAI : May I know whether Government have made enquiries to the number of persons affected ?

MR. M. K. NILAKANTA AIYAR : They have made enquiries but the figures are not now available.

Proposal of the Government of Ceylon to repatriate Indian labour.

128 ***MR. S. NARAYANA PILLAI.** Will the Government be pleased to state whether they have taken any steps in regard to the proposal of the Government of Ceylon to repatriate Indian Labour and the number of Travancoreans affected thereby ?

MR. M. K. NILAKANTA AIYAR : Government have forwarded their views to the Government of India and sought to impress upon them the necessity to take effective measures for counteracting the policy adopted by the Government of Ceylon which this Government recognise affects prejudicially a large number of Travancoreans. Other steps are also in contemplation.

Applications to start English Middle Schools in 1113.

129 ***MR. K. P. KOCHUKORATHARAKAN :** Will the Government be pleased :

(1) to lay on the table a statement showing the names &c. of persons who have applied for permission to start English Middle Schools in 1113, the places for which such applications have been received and the places for which sanction has been accorded ;

(2) to state whether they have granted permission to start any English Middle School or High School in any place in 1114 (up to 15-4-1114) ; and

(3) if so, will they be pleased to lay on the table a statement showing the names of the managers, the pakuthy and taluk in which such schools are situate, the classes allowed for each of such schools, the classes now held in them and the strength of such classes ?

MR. A. GOPALA MENON (*Director of Public Instruction*) : (1) A statement *is placed on the table.

(2) No.

(3) Does not arise in view of the answer to part (2)

*Vide Appendix VI.

Lady clerks in the Office of the Director of Public Instruction.

130 ***MR. K. P. KOCHUKORA THARAKAN**: Will the Government be pleased to lay on the table a statement, by caste, of the lady clerks appointed before 30th Meenam 1114, in the Office of the Director of Public Instruction?

MR. A. GOPALA MENON: No lady clerk was appointed in the office of the Director of Public Instruction before 30th Meenam 1114.

Petitions disposed of by the Conciliation Officers.

131 ***MR. JOSEPH VITHAYATHIL**: Will the Government be pleased to lay on the table a statement showing the number of petitions for conciliation of debts disposed of by the Conciliation Officers in the State and the number of cases in which agreements have been registered between the debtors and the creditors.

MR. PUTHUPALLY S. KRISHNA PILLAI: *The statement furnishing the Information is laid on the table.

Increment of pay to Government servants in the scale of Rs. 15 to 20.

132 ***MR. M. KESAVA PANICKAR**: Will the Government be pleased to state:

(*a*) whether in the case of Government servants in the scale of Rs. 15 to 20 some are given increment of pay once in two years, and others once in three years;

(*b*) if the answer to part (*a*) is in the affirmative, what is the reason for this difference; and

(*c*) whether there is a proposal to make it uniform?

MR. M. GOVINDA PILLAI: (*a*) The answer is in the affirmative.

(*b*) The scales of pay of the various posts are fixed with reference to the nature of their duties and the responsibilities attached thereto, which are not uniform in all cases.

(*c*) the answer is in the negative.

MR. M. KESAVA PANICKER: May I know the number of Government servants affected by the three years increment rule.

MR. M. GOVINDA PILLAI: I am not in a position to give the exact number.

MR. M. KESAVA PANICKER: May I know the approximate number?

MR. M. GOVINDA PILLAI: I claim notice.

PRESIDENT: If these questions are repeated, I have no doubt, the Financial Secretary will give the information.

Primary School Headmasters.

133 ***MR. P. NARAYANA PILLAI**: Will the Government be pleased to state:

(*a*) whether teachers who have passed the Malayalam Higher and E. S. L. C. Examinations are appointed as Primary School Headmasters; and

(*b*) if so, whether any percentage has been fixed between them and the Malayalam Lower trained teachers for promotion as Primary School Headmasters?

MR. A. GOPALA MENON: (*a*) Yes.

(*b*) 75 percent of the vacancies for the Tamil and Malayalam School Leaving Certificate Holders and 25 per cent. for Malayalam and Tamil Higher and E.S. L. Certificate holders in the proportion of 2 : 1.

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* *Vide* Appendix VII.

APPENDIX I.

Vide **Answers to Question No. 106.**

Statement of Candidates selected for apprentice course to learn the work of timber treatment.

No.	Name.	Caste.	Qualification.
1	G. Albert Lopez ...	Latin Catholic.	B. A. (Chemistry and Physics). Completed B. L. Course.
2	V. Subramoniam ...	Other Hindu.	B. A. (Chemistry and Physics.)

Appendix II (*a*)

Vide **Answer to Question No. 108.**

Castewar Statement of the Officers of the Accountant General's Office.

A.	*Hindus.*		
	1. Brahmins	...	60
	2. Nayars	...	62
	3. Other Caste Hindus	...	22
	4. Kammala	...	3
	5. Nadars	...	2
	6. Ezhavas	...	9
	7. Pulayas	...	1
	8. Other Hindus	...	7
B.	*Muslims.*	...	5
C.	*Christians.*		
	1. Jacobite	...	6
	2. Mar Thomite	...	12
	3. Syriac Catholic.	...	7
	4. Latin Do.	...	3
	5. S. I. U. C.	...	10
	6. Other Christians	...	1

Appendix II (*b*)

Vide **Answer to Question No. 108.**

			Department from which taken.	Pay before trnsfer	Pay after transfer
				Rs.	Rs.
Brahmin	4	V. Subramonia Iyer	Land Mortgage Bank	50	50
		K. Sankaranarayana Iyer	Do.	31	31
		B. S. Thanukrishna Iyer	Do.	34	34
		S. Padmanabha Iyer	Public Service Commissioner's Office	31	31
Nairs	6	R. Gopala Pillai	Anchal Department	60	60
		G. Sreedharan Nair	Land Mortgage Bank	31	31
		P. R. Vikraman Nair	Do.	31	31
		M. Madhavan Pillai	Do.	22	25
		E. K. Narayana Menon	Office of the Director of Public Instruction	25	25
		R. Parameswaran Pillai	Sacretariat	11	14
Ezhavas	2	N. R. Kesavan	Office of the Director of Public Instruction	25	25
		P. Ponnamma	Land Revenue Commissioner's Office	20	25
Other Hindu	2	P. N. Narayanan Pandaram	Electrical Department	25	25
		Ammini	Land Mortgage Bank	20	25
Christian	1	P. C. Kurien	Do.	50	50
Muslim	1	J. Syed Moideen	Government Mint	12	15

Appendix II, c.

Vide **Answer to Question No. 108.**

Appointed under orders of Government during 1114.

No.	Name.	Scale of pay.	Salary. Rs.
1	C. K. Kumaran	75-5 100	75
2.	K. J. George	25-3-40	40
3.	K. C. Mathew	25-3-40	40

Appendix III.

Vide Answer to Question No. 109.

Huzur Cutcherry,

No. Fl. 3036.

Trivandrum, 25th April 1939.

From

The Financial Secretary to Government.

To

The Accountant General.

Sir,

I have the honour to inform you that your proposals as well as those of your predecessors in office for giving better chances to the undergraduate auditors of your office in the matter of promotions having been carefully considered by Government, they have been pleased to issue the following orders in modification of those contained in G. O. R. O. C. No. 680/35/1/Gl., dated 16th April 1935.

1. *Rs.* 100-125. The present complete exclusion of under-graduates from the scale of Rs. 100-125 is withdrawn in the case of very efficient auditors, it being specially noted that only in *very exceptional cases* should undergraduates be promoted to the Rs. 100-125 grade.

2. *Rs* 75-100. The existing proportion of 3 : 1 between graduates and undergraduates in the matter of promotions to the Rs. 75-100 grade will be replaced by a proportion of 3 gradutaes for every 2 undergraduates. The restriction in para 10 of the standardisation general G. O. that the total number of undergraduates in the Rs. 75-100 grade shall not exceed 25 percent of the sanctioned strength is also withdrawn.

3. *Rs.* 40-70. The ratio between graduates and undergraduates for promotion to Rs. 40-70 grade may be fixed at 2 graduates for every undergraduate in lieu of the existing ratio of 3 :1.

The concessions allowed as above to undergraduates for promotion to the Rs. 75-100 grade will apply only to those who, on the date of these orders, have completed not less than 20 years' service in the Accounts Department and for promotion to the Rs. 40-70 grade to those who have similarly completed a service of not less than 15 year's service.

The above orders are issued in view of the fact that both graduate and undergraduate auditors do more or less the same kind of work in your office. These orders cannot, therefore, be quoted as a precedent by any other department.

I have etc.,

Sd.—M. Govinda Pillai,

Financial Secretary to Government.

Appendix IV.

Vide Answer to Question No. 113.

Statement showing the number of Sessions cases tried in each of the Sessions Courts in the State from Edavom 1113 to Meenom 1114, the number of cases ended in conviction and the number of cases acquitted.

Serial No.	Name of Court.	Number of Sessions Cases tried from Edavom 1113 to Meenom 1114.	Number of cases convicted.	Number of cases acquitted.	Remarks.
1	Sessions Court, Nagercoil	18	8	10	
2	Do. Trivandrum	58	39	19	
3	Do. Quilon	65	35	29	One still pending.
4	Do. Alleppey	31	22	8	One abated as the accused died before trial began.
5	Do. Kottayam	77	49	23	Five pending trial.
6	Do. Parur	15	10	5	

Appendix V.

Vide Answer to Question No. 119.

Statement showing the list of Ayurveda Vydyasalas for which grants were newly Sanctioned.

Serial No.	Name of Vaidyasala.	Name of Vaidyan.	Community.	Amount of grant.	Year.
1	S. K. V. Vaidyasala, Quilon Town ..	M. P. Krishnan Vaidyan ...	Ezhava	Rs. 25	1113
2	Perumpuzhi, Nattalam ...	John Samuel ...	S. I. U. C.	Rs. 15	Do.
3	Kaipuzha, Kottayam ...	K. N. Padmakshy ...	Ezhava	Rs. 15	Do.
4	Kalluppara, Tiruvalla ...	K. Kochurama Kaniyar ...	Kaniyar	Rs. 15	Do.
5	Muhamma, Shertalai ...	K. K. Sankunni ..	Ezhava	Rs. 15	Do.
6	Mevata, Meenachil ...	Kunjarappan Kartha...	Nair	Rs. 15	Do.
7	Thidanad, Do. ...	N. V. Varkey ...	Syriac Catholic	Rs. 15	Do.
1	Ezhukone ...	C. K. Nilakantan ...	Ezhava	Rs. 15	1114
2	Oruvathilkotta ...	S. D. Das ...	Ezhava	Rs. 15	Do.
3	Thovala ...	V. Abel Mudaliar ...	Mudaliar (Other Christian)	Rs. 15	Do.
4	Kadinamkulam ...	M. Mahomed Ali ...	Muslim	Rs. 15	Do.
5	Kallara, Vamanapuram ...	K. Raghavan ...	Ezhava	Rs. 15	Do.
6	Kanakari ...	Madhava Kaimal ...	Nair	Rs. 15	Do.

Appendix VI.

Vide Answer to Question No. 129.

Statement of applicants to start English Middle Schools in 1113.

No.	Name of applicant.	Place for which the application has been received.	Place for which sanction has been accorded.
	TRIVANDRUM DIVISION.		
1	Rev. Fr. Peckman, Manager, L. M. English High School, Nagercoil.	Kattakada (Agasteeswaram)	...
2	Mr. K. Kesavan, Manager, Pappanamcode Primary School.	Pappanamcode (Neyyattinkara)	...
3	Mr. P. K. Kunjuraman Nair, Edarattam	Edarattam (Kottarakara)	...
4	Mr. C. K. Gopala Pillai, Manakad, Trivandrum.	Manakad (Trivandrum)	...
5	Mr. A. P. Thampi B. A., Trivandrum.	Do. Do.	...
6	Mr. O. S. Maheswaran Tampuran, Chengannur.	Mylam (Nedumangad)	...
7	Mr. M. Velayudhan, Poovar.	Ammanurthura (Neyyattinkara)	...
8	Sry. L. Gomathi Amma, Anducode.	Anducode (Vilavancode)	...
9	Rev. Fr. Peter, Puthenpurackal, Kollencode	Kollencode do.	...
10	Mr. A. Damodaran Pillai, Mullur.	Mullur (Neyyattinkara)	...
	QUILON DIVISION.		
1	Mr. Andi Pillai, B. A., L. T., President English School Committee, Thiruvampady, Alleppey.	Thiruvampady, (Alleppey).	...
2	Mr. A. Padmanabha Kurup, Anadil House, Thekkekara, Mavelikara.	Nooranad, Mavelikara.	...
3	Mr. Narayanar Narayanar, Koipalli Madom, Pattoor, Nooranad Mavelikara.	Do.	...

APPENDIX VI—(*contd.*)

No.	Name of applicant.	Place for which the application has been received.	Place for which sanction has been accorded.
	QUILON DIVISION—(*contd.*)		
4	Mr. P. M. Nanu, Manager, Mundakal Primary School, Quilon.	Udayamarthandapuram Eravipuram, Quilon.	...
5	Rev. A. M. Lukose, Attupurathu Veedu, Cherukole, Mavelikara.	Puthenkottakakam, Mavelikara.	...
6	Rev. V. P. Mammen, B. A. M. T. V. Schools, Thiruvella.	Edathitta Kodumon, Kunnathur.	...
7	Mr. T. G. George, Thazhathil House, Kadampanad.	Kadampanad, Kunnathur.	...
8	Mr. M. Cheriyan, Kochayathu House, Muttom, Haripad.	Muttam, Haripad.	...
9	Mr. N. M. Kochukunju, Naduvileveetil Kizhakkethil, Muttom, Haripad.	Muttom, Haripad.	...
10	Rev. Fr. Louis Gonsalvez, Vicar, Kattoor.	Valavanadumuri, Mararikulam South, Ambalapuzha.	...
11	Mr. T. J. Perumal, Manager, Changavilayil Primary School, Mavelikara.	Cherukole, Mavelikara.	...
12	Mr. P. Govinda Kurup, Chalacheril House, Venmoni, Earathu, Thiruvella, Ala, Ramapuram.	Edapon, Nooranadu, Mavelikara.	...
13	Mr. Abraham Thomas B. A. Valliathu House, Nedumon, Parakod.	Nedumon, Parakod.	...
14	Mr. M. C. Samuel, retired Y. M. C. A. Secretary, Haripad.	Akomkudy, Pallipad, Haripad.	...
15	Mr. K. Kunjuraman, Kilikollur, Mangad, Quilon.	Mangad, Quilon.	...
16	Mr. Madhavan Pillai B. A. Karikode, Quilon.	Karikode, Do.	...
17	Rev. Fr. Urban Superior Manager, St. Therisa's Primary School, Thilleri, Quilon.	Thilleri, Quilon.	...
18	Mr. M. K. Ananthasiva Iyer, M. L. C., Monkompu.	Monkompu, Ambalapuzha.	Sanctioned.

APPENDIX VI—(*contd.*)

No.	Name of applicant.	Place for which the application has been received.	Place for which sanction has been accorded.
	THIRUVELLA DIVISION.		
1	Secretary Martha Mariam Vanitha Sangham.	Vallamkulam, Eraviperur, Thiruvella.	...
2	Fr. Mathew, Thekkekara, Kanjirapalli.	Ponkunnam, Chirakadavu, Changanacherry.	...
3	Manager, K. V. English Middle School, Elangulam.	Do.	...
4	Metropolitan of Kottayam.	Kangazha, Vazhoor, Changanacherry.	...
5	Mr. Narayana Panicker, Sankara Panicker.	Thalayar, Eraviperoor, Thiruvella.	...
6	Rev. Fr. K. I. Varghese, Prakanam.	Prakanam, Omalloor, Pathanamthitta.	...
7	Mr. Vignana Chandresan, Aryabhavvan.	Ponkunnam, Chirakadavu, Changanacherry.	...
8	Fr. Joseph Panjikaran, Vicar, St. Michael's Church, Kavil.	Pattanacad, Vayalar East, Shertallai.	...
9	Mr. K. V. George, Kythayil House, Vakathanam.	Vakathanam, Puthupally, Changanacherry.	...
10	Fr. Markose, Puthur House, Mulakulam.	Mulakulam, Vaikom.	...
11	Mr. T. C. Varki, Varikad, Thiruvella.	Varikad, Thiruvella.	...
12	Mr. C. R. Patchu Nair, Secretary, N. S. S. 810.	Manjanikara, Omallur, Pathanamthitta.	...
13	Fr. K. C. Alexander, Kuttikandathil.	Cherukole, Ranni, Pathanamthitta.	...
14	Mr. M. K. Govinda Pillai, Mangalathu Veedu.	Vazhur, Chengannur.	Sanctioned
15	Mr. T. K. Cheriyan, Kumpelil, Tharakathu.	Kaipattoor, Vallicode, Pathanamthitta.	Do. Tentatively.
16	C. N. Narayana Pillai, Thampalakad.	Thampalakad, Kanjirapalli, Changanacherry.	...

APPENDIX VI—(*contd.*)

No.	Name of applicant.	Place for which the application has been received.	Place for which sanction has been accorded.
	THIRUVELLA DIVISION—(*contd.*)		
17	Mr. M. C. Mathai, Vakil, Chengannur.	Thiruvanvandoor, Thiruvella.	...
18	Mr. P. S. Vasudevan Pillai.	Makkapuzha, Ranni, Pathanamthitta.	...
19	N. S. Society	Makkapuzha, Ramankari, Changanacherry.	Sanctioned
20	Mr. C. John Jacob, Cheruvalloor.	Cheruvalloor, Cherianad, Thiruvella.	...
21	Rev. C. P. Philippose Kaseesa, S. C. S.	Karikode, Mulakulam, Vaikom.	...
	MUVATTUPUZHA DIVISION.		
1	Rev. C. P. Philippose Kaseesa, Thiruvella.	Ayakkadu.	...
2	Rev. Fr, George, Kochupurakal, Nariveli.	Ayarkunnam.	...
3	Rev. Fr. Alexander Nirakkal, Chemmalamattam.	Chemmalamattam.	...
4	Mr. K. V. Joseph, Pottankulam, Kanjirapalli.	Pinnakkanad.	Sanctioned.
5	Rev. Fr Joseph Koodathinal, Vakkakad.	Erumapramattom.	...
6	Mr. K. V. Joseph, Kalathoor, Kuruvilangad	Kalathoor.	...
7	Rev. Fr. Geevarghese Attunkal, Keerampara.	Keerampara.	...
8	Mr. A. K. Kesavan Namboori, Koothattukulam.	Koothattukulam.	Sanctioned.
9	Mr. K. V Ittan Pillai, Kozhiplakkiel.	Do.	...
10	Rev. P. I. Mathai Kathanar, Kunnakurudi.	Kunnakurudi.	...
11	Fr. Geevarghese, Pandikudy.	Kuruchilacode.	...

APPENDIX VI – (*contd.*)

No.	Name of applicant.	Place for which the application has been received.	Place for which sanction has been accorded.
	MUVATTUPUZHA DIVISION—(*contd.*)		
12	Rev. Fr. Joseph, Panikulam	Kuruchilacode.	...
13	Rev. Fr. Joseph Thaliath, Cheranalloor.	Koodalpad.	...
14	Rev. Fr. K. I. Joseph Kurinji, Marangattupally.	Kurunji.	...
15	Rev. Fr. George Kochuparambil, Nagappuzha.	Nagappuzha.	...
16	Rev. Fr. Thomas Varghese, B. A., Alwaye.	Nedumpasserry.	...
17	Mr. N. M. Joseph B. A., Pandapilly.	Pandapilly.	...
18	Rev. Fr. Paul A. George, Kattarkadu.	Paravoothara.	...
19	Rev. Fr. Abraham Marthoma, Manager, Ashram English High School, Perumbavoor.	Perumbavoor.	...
20	Rev. Fr. Mathew Thazhathil, Manager, St. Thomas V. M. School, Vilakkumadom.	Vilakkumadom.	Sanctioned.
21	Rev. Fr. Kuruvilla Plathottam, Minachil.	Poovarani.	...
22	The Most Rev. Paulose Mar Athanasius, Bishop of Angamali.	Vadassery.	...
23	Rev. Fr. P. V. Mathai, Patlat Vengola.	Vengola.	...
24	Mr. P. K. Mathew, B. A., B. L., Mahilalayam, Alwaye.	Vengoor.	...
	GIRLS' BRANCH.		
1	Fr. Sebastian, 'Karottuvempani, Vicar, St. Joseph's Church, Aruvithurai.	Aruvithurai, Minachil taluk.	...
2	Rev. Fr. Joseph Kuzhinjalil, Christurayapuram, Marthandom.	Kodumkulom, Vilavancode.	...
3	Vidwan A. N. P. Nair, Secretary & Correspondent, Vidyalaya Poshini Institution, Mavelikara.	Kayamcolam.	Sanctioned.

Appendix VII.

Vide Answer to Question No. 131.

Statement showing the number of petitions for conciliation of debts disposed of by the Conciliation Officers in the State and the number of cases in which agreements have been registered between the debtors and the creditors ?

The total number of petitions for conciliation disposed of by the Conciliation Officers in the State	...	5453
The total number of cases in which agreements have been registered between the debtors and the creditors	...	608

UNSTARED QUESTIONS AND ANSWERS.

P. W. Division Office at Nagercoil.

11. **MR. K. NARAYANAPERUMAL NADAR** (*Tovala* cum *Agastiswaram*) : Will the Government be pleased to state :

(*a*) whether the P. W. Division Office in Nagercoil was inspected by the Auditors in 1112 or 1113 ;

(*b*) how many cases of acceptance of tenders other than the lowest were noticed ; and

(*c*) the reasons recorded for accepting such tenders ?

MR. G. B. E. TRUSCOTT (*Chief Engineer*) :

(*a*) The P. W. Division Office was inspected by the Auditors in 1113 and no inspection was made in 1112.

(*b*) No mention was made by the Auditors regarding acceptance of tenders in 1113.

(*c*) This does not arise in view of answer to part (*b*).

Introduction of improved means of fishing.

12. **MR. CODIVEETIL C. RAMANKUNJU** (*Nominated*) : Will the Government be pleased to state whether any officer of the Fisheries Department has since its inception been able:

(*a*) to devise and introduce any new or improved implement for fishing ;

(*b*) to introduce any method of preparing fish and fish oil or other fish products for the market in addition to those existed in the country before the inauguration of the Department ;

(*c*) to introduce and develop any foreign species of fish into the State :

(*d*) to ascertain the possibilities of profitable fish-breeding in inland waters ; and

(*e*) to find out the cause of disappearance of oil sardine and some other species of fish continuously for years together ?

MR. M. K. NILAKANTA AIYAR (*Chief Secretary to Government*) :

(*a*) to (*d*). Yes.

(*e*) No.

Applications for appointment as Fishery Inspector.

13. **MR. CODIVEETIL C. RAMANKUNJU** : Will the Government be pleased to state :

(*a*) the names, qualification and caste of persons applied for the Fishery Inspector's place fell vacant by the retirement of Mr. K. M. Pothen ;

(*b*) of the above who all belonged to the fishing class ;

(*c*) who were the persons recommended by the Public Service Commissioner ;

(*d*) what are the qualifications of the person appointed ; and

(*e*) whether the Government have considered the claims of members of the fishing classes in view of their past orders and assurances ?

MR. M K. NILAKANTA AIYAR :

(*a*) The names of candidates for the Public Service are confidential. The qualifications and communities of the persons who applied for the vacancy of Fishery Inspector notified in the Gazette for the first half of 1114 are appended.

Qualification.	*Community.*
M. Sc. (Benares) B. A. (Madras) Fishery course of the University of Liverpool.	Nayar.
M. Sc. (Agra) B. A. (Madras)	Syriac Catholic.
B. Sc. (Madras)	Jacobite.
B. A., B. Sc. (Honours)	Jacobite.
B. A. (Madras)	Syriac Cotholic.
B. A. (Madras.)	Nair
B. A. Do.	Ezhava.

(*b*) None.

(*c*) No specific recommendation was made. A list containing the registered numbers of two candidates whose qualifications were nearest to those prescribed was published in the Public Service Departmental sheet of the Government Gazette dated the 11th October 1938.

(*d*) M. Sc. (Benares), B. A., (Madras) and fishery course in the University of Liverpool.

(*e*) This does not arise.

Fishery Schools in the State.

14. **MR CODIVEETIL C. RAMANKUNJU:** Will the Government be pleased to state:

(*a*) when did they start each of the Fishery Schools in the State;

(*b*) what are the standard of literary and techinical education imparted in each school;

(*c*) the number of trained and untrained teachers and their other qualifications;

(*d*) the value of weaving apparatus supplied to each school; and

(*e*) the value of yarn supplied to each instituion and cloth produced every year since the year 1100 M. E.?

MR. M. K. NILAKANTA AIYAR : (*a*) to (*e*) A * statement furnishing the information is laid on the table.

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* *Vide* Appendix I. Page

Officers and staff in the Fisheries Department.

15. **MR. CODIVEETIL C. RAMANKUNJU:** Will the Government be pleased to state whether some of the officers and staff in the Fisheries, Department are Caste Hindus and orthodox vegetarians, and, if so, whether they will be pleased to enquire and state the names of such persons, post held, salary drawn and qualifications?

MR. M. K. NILAKANTA AIYAR: Government consider that it is neither necessary nor practicable to ascertain accurately the number of orthodox vegetarians among the officers and staff in the Fisheries Department. As regards "Caste Hindus", the distinction does not exist since the promulgation of the Temple Entry Proclamation.

Irrigation works in Neyyar.

16. **MR. T. C. KESAVA PILLAI:** Will the Government be pleased to state:

(*a*) whether there are requisitions from the people of Neyyattinkara taluk regarding the construction of irrigation works in Neyyar either at Arivipuram or at Aruvikara in Neyyar to irrigate lands in Parassalai and other places to benefit the irrigational tanks in that area; and

(*b*) if the answer is in the affirmative whether any report has been called for from the Minor Irrigation Division, Quilon?

MR. G. B. E. TRUSCOTT: (*a*) Yes.

(*b*) Yes.

Appendix I.

Vide Answer to unstarred Question No. 14.

Statement regarding Fishery Schools in the State.

Name of School.	(a) Date of starting of each school.	(b) Standard of literary and technical education imparted in each school.	(c) Number of teachers in the several schools.		Other qualifications.	(d) Value of weaving apparatus supplied to each school.			(e) Value of yarn supplied.			Value of cloth produced since 1100 M. E.		
			Trained.	Untrained.		Rs.	ch	c	Rs.	ch	c.	Rs.	ch	c.
1. Fishery School, Panavally.	1-6-1093	Literary education as in Government Primary Schools classes 1 to 3 Technical—weaving and net-making, coir making and coir weaving.	Nil.	two	*Headmaster* Vernacular Higher and Co-operative training. *Assistant.* Weaving (Intermediate Grade)	78	1	8	126	25	5	184	25	11
2. Fishery School, Aroor.	1-3-1098	Classes 1 to 4 as in Primary Schools. Technical education, Weaving, primary principles of co-operation and training in Fish Industries.	Nil.	three	*Headmaster.* Travancore Middle School and Co-operative training. *1st Assistant* V. S. L. C. & Agricultural training. *2nd Assistant.* Weaving (Elementary)	177	1	8	265	14	11	245	13	3

APPENDIX I—(*contd*)

Name of School.	(a) Date of starting of each school.	(b) Standard of literary and technical education imparted in each school.	(c) Number of teachers in the several schools. Trained.	Untrained.	Other qualifications.	(d) Value of weaving apparatus supplied to each school. Rs.	ch	c.	(c) Value of yarn supplied. Rs.	ch	c.	Value of cloth produced since 1100 M. E. Rs.	ch	c.
3. Fishery School, Kothavara.	1-5-1100	Classes 1 to 3 Technical education weaving only.	Nil.	two	*Headmaster.* Vernacular Higher and co-operative training. *Assistant.* Weaving (Elementary.)	132	2	0	164	16	3	164	16	3
4. Fishery School, Munambam.	1-3-1103	Classes 1 to 4 Weaving, Principles of co-operation and docum ent writing	Nil.	Four	*Headmaster.* V. S. L. C. and Co-operative training. *1st Assistant.* V. S. L. C. *2nd Assistant.* V. S. L. C. *3rd Assistant.* V. S. L. C. and Weaving (Elementary.)	661	8	5	575	0	0	641	2	1

APPENDIX—(*contd.*)

Name of School.	(a) Date of starting of each school.	(b) Standard of literary and technical education imparted in each school.	(c) Number of teachers in the several schools. Trained.	(c) Number of teachers in the several schools. Untrained.	Other qualifications.	(d) Value of weaving apparatus supplied to each school. Rs.	ch	c.	(e) Value of yarn supplied. Rs.	ch	c.	Value of cloth produced since 1100 M. E. Rs.	ch	c.
5. Fishery continuation School, Kuzhithurai.	13-10-1108	Classes V and VI and Fishery subjects and weaving.	Nil.	Four	*Headmaster.* E. S. L. C. and Fishery training (Calicut). *1st Assistant.* V. S. L. C. *2nd Assistant.* E. S. L. C. and Vernacular Higher. *Technical Assistant.* Weaving Examination.	107	22	0	114	26	12	177	11	2

PORTRAIT OF HIS HIGHNESS THE MAHARAJA.

PRESIDENT : I dare say honourable members have noticed that a picture of His Highness the Maharaja has been put up here. I am very glad to observe that it is very speaking likeness. It has been the work of a Travancore Artist.

MR. M. SIVATHANU PILLAI : May I know his name.

PRESIDENT : Mr. M. B. Krishna Iyer. He was a pupil of the late Raja Ravi Varma.

AGRICULTURAL DEBTS CONCILIATION COMMITTEE.

PRESIDENT : I have to announce that on Saturday, the 24th June 1939 at the meeting held under the presidency of the Deputy President for the election of three members to the Agricultural Debts Conciliation Committee, Mr. K. C. Karunakaran got 33 votes, Mr. N. Narayana Kurup got 32 votes and Mr. Kainikara Padmanabha Pillai got 30 votes. Since these three have secured the largest number of votes they are declared elected.

LEGISLATIVE BUSINESS—(*contd.*)

THE TRAVANCORE HINDU INHERITANCE (REMOVAL OF DISABILITIES) BILL.

MR. N. RAMAKRISHNA PILLAI : I beg to move that the Travancore Hindu Inheritance (removal of disabilities) Bill be taken up for consideration. It was passed by the Sri Chitra State Council on the 22nd August 1938.

MR. N. NARAYANA KURUP : I second it.

PRESIDENT. The question before the House is that the Travancore Hindu Inheritance (Removal of disabilities) Bill as passed by the Sri Chitra State Council be taken up for consideration.

The motion was put and carried.

MR. N. RAMAKRISHNA PILLAI : I beg to move that the Travancore Hindu Inheritance (Removal of Disabilities) Bill be passed.

The motion was put and carried.

Clauses 1 to 5.

The question that clauses 1 to 5 of the Travancore Hindu Inheritance (Removal of Disabilities) Bill do form part of the bill was put and carried.

The clauses were added to the Bill.

Title and Preamble.

The question that the Title and Preamble do form part of the Bill was put and carried.

The Title and Preamble were added to the Bill.

MR. N. RAMAKRISHNA PILLAI : I beg to move that the Travancore Hindu Inheritance (Removal of Disabilities) Bill be taken up as passed.

The motion was put and carried.

THE TRAVANCORE CHILD MARRIAGE RESTRAINT BILL.

PRESIDENT: Clause 8 was under consideration when the House rose last time. Mr. E. Subramonia Iyer had moved Amendment No. 10.

MR. PUTHUPALLI S. KRISHNA PILLAI: With regard to this matter I wish to bring to your notice that a controversy was raised whether after accepting Amendemnt No. 9...........

PRESIDENT; I see that the Deputy President has given a ruling.

MR. PUTHUPALLI S. KRISHNA PILLAI: The Ruling then given was:

> "The point of order is whether the amendment of Mr. E. Subramonia Iyer on the clause as amended by Srimati Narayani Amma and carried should be allowed to be moved. In considering whether this amendment can be allowed, I am governed by the provisions of Standing Order Nos. 23 and 25. Standing Order No 23 lays down that a motion cannot be raised on a substantially identical one on which the Assembly has already given its decision in the same session. Now, it has to be considered whether the motion that is proposed by Mr. E. Subramonia Iyer raises a question substantially identical with the one on which the Assembly has given a decision in the matter of Srimati Narayani Amma. For my part, I must rule that the motion of Mr. E. Subramonia Iyer does not raise a question substantially identical as recorded on the motion of Srimati Narayani Amma".

Under Standing Order 25, the Deputy President ruled that there was no objection. But Standing Order No. 25, according to me stands in the way of allowing discussion of this amendment. Standing Order No. 25 Clause 4 is this:

> "An amendment on a question must not be inconsistent with any previous decision on the same question given at the same stage of any Bill or motion".

PRESIDENT: The principle of *stare decisis* is applicable to this matter. The Deputy President has prefaced his observations with these words: "In considering whether this amendment can be allowed, I am governed by the provisions of Standing Order Nos. 23 and 25." It must be presumed that he has applied his mind to Standing Order Nos. 23 and 25. I am not going to rule out the discussion.

MR. E. SUBRAMONIA AIYAR. I crave the indulgence of the House to withdraw my amendment.

The amendment, by leave, was withdrawn.

MR. P. S. NILAKANTA AIYAR: I move that in Clause 8, add the following at the end:

> "and upon deposit of rupees hundred for payment of any compensation which the Court May award to the accused under section 227 of the Criminal Procedure Code. This amount or the balance that is left, if any, after payment of compensation may be returned to the party making the deposit if no such compensation is awarded or if a balance is left after making the payment as the case may be."

Clause 8.

MR. P. S. NILAKANTA AIYAR (*Co-opted*): I find another amendment to Mr. E. Subramonia Ayer's name, namely amendment No. 19 to the effect that—

• Add the following as Clause 11:

"11 Our Government may by notification in the Government Gazette exempt any community from the operation of this Regulation and shall on the application made in that behalf within six months of the passing of this Regulation, so exempt any Brahmin family in Travancore."

I suppose that these two amendments may be taken together. If this is moved I think there is no necessity of moving my amendment.

MR. E. SUBRAMONIA AIYAR: Sir, I claim permission of the House to add a.......... ...

PRESIDENT: Order, order. The honourable member should surely raise his voice.

MR. E. SUBRAMONIA AIYAR: Sir, I crave permission of the House at this stage to move the amendment standing to my name, *viz.*, amendment No. 19.

PRESIDENT: Order, order. What has happend to amendment No. 9?

If the Honourable member wishes to take any amendment out of the natural order he must have the leave of the House and therefore he must formally apply for permission for adducing special reasons which have to be indicated for any special procedure that he may take.

MR. E. SUBRAMONIA AIYAR: Sir, I make formal application and request that permission be given to move the amendment No. 19 on the basis of the fact that if that amendment is carried or otherwise dealt with I do not propose to move any other amendment standing in my name so far as this Bill is concerned. That is the most important amendment in my view. So far as that amendment is concerned it is fundamental whether power should be given to the community or any particular family that make the application to conduct the Child Marriage so that at least the present generation, if it finds a necessity in exceptional cases, may have recourse to this safeguard.

PRESIDENT: Order, order. The position at which we have arrived is this, we have gone up to clause 8 and there are no further amendments appertinent to clause 8. So I shall have to put clause 8 to the vote and thereafter the Honourable member Mr. E. Subramonia Aiyar may move for the leave of the House to press amendment No. 19. I shall take the sense of the House on the matter.

The question whether clause 8 stands part of the Bill was put and carried.

Clause 8 was added to the Bill.

MR. E. SUBRAMONIA AIYAR: Sir, I crave for permission of the House to consider amendment No. 19 standing to my name. As I have submitted this is the fundamental provision so far as the Bill is concerned.

PRESIDENT: Order, order. First the question of procedure must be dealt with before the merits are discussed. The amendment is moved. Is it seconded?

MR. P. S. NILAKANTA AIYAR: I second it.

PRESIDENT: The amendment is moved and seconded.

The question before the House is that permission may be granted to the mover to move amendment No. 19 as the next in order, on the ground he has urged that if that amendment be either carried or defeated he and the other sponser of the numerous amendments will not press those amendments or that they might be become needless.

The question was put to vote and carried.

PRESIDENT: Mr. E. Subramonia Aiyar will now proceed.

MR. E. SUBRAMONIA AIYAR: Sir, my amendment is as follows:—

Add the following as Clause 11:

"Our Government may be notification in the Government Gazette exempt any community from the operation of this Regulation and shall on application made in that behalf within six months of the passing of this Regulation, so exempt any Brahmin family in Travancore."

PRESIDENT: I find a most uncharacteristic hesitation on the part of the Honourable member.

MR. E. SUBRAMONIA AIYAR: With the President's permission I may be permitted to speak a little low. I would request the House to take away the word 'Brahmin' Sir, I do not propose to discuss the matter at great length. The discussion of the several sections on this Bill at prior stages has revealed according to me the main points or the main reasons which induce me to make this request to the House. It is enough for me to say that exceptional cases may arise when marriages may have to be performed where the parties to the marriage had not reached the age given in this Bill. Fourteen is the age fixed for the girl and eighteen is the age fixed for the boy. It is not every day that cases arise where the girl is below fourteen or the boy below eighteen. I may assure you that in the majority of instances the age of the boy will be above eighteen. In exceptional cases I may add that it may become necessary to marry a girl who has not reached the age of fourteen. I do not think I shall be out of place if I make a reference to myself at this stage. I had been educating a boy at my own expense in order that I may find a proper match for my girl. I do belong to the Brahmin community, but I belong to a section of the Brahmin community where you can count persons of influence and education on the fingers. Probably, very few know to which particular section of the Brahmin community I belong. But do not take me to be a Mukkaniyan Brahmin.

PRESIDENT: Order, order. Need we go into these details for the purpose of the Travancore Child Marriage Restraint Bill?

MR. E. SUBRAMONIA AIYAR: Sir, I am only referring to an instance.

MR. T. C. KESAVA PILLAI: May I know whether any child marriage took place in the Brahmin community since the last session of the Assembly?

MR. E. SUBRAMONIA AIYAR: I shall remove all apprehensions in the mind of my honourable friend. He knows that a child marriage has taken place. I am only pointing out the difficulty I have in selecting a

bridegroom from my community. It is rather an arduous or rather an impossible task. I had to look for a boy and educate him. He is reading in the B. A. (Hons.) class. My child just completed 10 and being afraid that I may be tabooed, I have conducted the marriage before the Bill came into law. Such exceptional cases may arise. I am requesting the House to make provision for such exceptional and not for every case. If anybody whishes to avail himself of such concession, leave it to the Government to except the community or the particular family. Let the patriarch of the family make an application not a few days before the marriage but within six months of the passing of this Act. If anybody is desirous of getting exempted let him come forward and make the application for exemption.

MR. C. JEBAMONY NADAR: May I know whether the exemption would be permanent? If an exemption is granted is it to continue for ever?

MR. E. SUBRAMONIA AIYAR: If an exemption is granted to a family certainly the exemption can be availed of by any member of the family from generation to generation. But in operation it will confine itself to the particular persons who made that application.

PRESIDENT: I presume it is the agnatic family.

MR. E. SUBRAMONIA AIYAR: Yes. So I do not want to discuss that aspect of the matter. I am only requesting that an apportunity might be given to persons placed in my situation to avail themselves of an opportunity of getting an exemption before hand and it is not always the case that exemption will be used.

MR. M. SIVATHANU PILLAI: May I know why the exemption should be given for a particular community?

MR. E. SUBRAMONIA AIYAR: In moving an amendment a comprehensive method must be taken, the change in wording should be noted. "Our Government may exempt." So far as the family is concerned it make an application for the grant of exemption and it is open to Government to exempt any particular community in the circumstances of that community make it desirable to grant that exemption. The latter part of the amendment, namely that if an application is made in their behalf within six months of this law coming into force...........

PRESIDENT: Has the Honourable Member any idea as to whether any other community other than his own has expressed its desires for exemption? Is he aware of any other community?

MR. E. SUBRAMONIA AIYAR: Sir, the other day when the matter was being discussed it was pointed out that the Vishnava community, wanted exemption....

MR. C. JEBAMONY NADAR: What I submitted then was that the Vishnava community had this idea in mind ?

PRESIDENT: If, as a matter of fact any community has made any application or evidenced any such desire, will the Honourable member consider the advisability to omit the word 'Brahmin' and proceed with the amendment ?

MR. E. SUBRAMONIA AIYAR: Sir, that word may be omitted. "Exempt any family" is enough. So I do not propose to discuss the matter any further. I would request the House to consider the matter from all points of view which may commend itself to them and support me in carrying out this amendment.

MR. M. SIVATHANU PILLAI: May I know whether the Honourable member is willing to substitute "may" instead of "shall"

MR. E. SUBRAMONIA AIYAR: I shall be satisfied, if the best cannot be had, with the next best. I am for "shall." But if "shall" cannot be had it is a matter for the House.

PRESIDENT: Order, order. What is the amendment which the Honourable member is putting forward ?

MR. E. SUBRAMONIA AIYAR. "Our Government may, by notification in the Government Gazette, exempt any family in Travancore from the operation of this Act, on application made in that behalf within six months of the Passing of this Act."

PRESIDENT: Is the amendment seconded ?

MR. P. S. NILAKANTA AIYAR: I second it. Sir, I shall say one or two words in this matter. There are provisions to exempt particular persons and families in other native States like Indore, Gualior and other places where similar legislation was passed. So this exempting clause is not without a precedent. In the case of the Nair and Ezhava Acts also there is provision for exempting particular families from the operation of particular provisions in the same. So there is precedent here and elsewhere, for exemptions to be made in a piece of social legislation. With these words I second this proposition.

PRESIDENT: Any other Honourable member desiring to make any observation ?

SRIMATI T. NARAYANI AMMA: Sir, I oppose the amendment. It goes against the very principle of this Bill which has already been accepted by this House. I am anxious, Sir, that the benefit of an important piece of legislation like this should not be whittled down by such loop-holes as are sought to be introduced by this amendment. I oppose the amendment.

The amendment was put to vote and carried.

SRIMATI T. NARAYANI AMMA: Sir, I demand a poll.

A poll was accordingly taken with the following result.

AYES—46.

1. P. Khan Bahadur Abdul Karim
2. Mr. Kottalil P. Abraham
3. ,, P. C. Adichan
4. Sahib Bahadur V. Chandamiah
5. Mr. M. L. D'Cruz
6. ,, K. Dominic Joseph
7. ,, E. E. Pandarathil
8. ,, D. Francis
9. ,, M. A. Gopala Menon
10. ,, M. Govinda Pillai
11. ,, N. John Joseph
12. ,, M. P. Joseph
13. ,, N. V. Joseph
14. ,, Joseph Vithayathil
15. ,, K. C. Karunakaran
16. ,, M. Kesava Panickar
17. M. G. Kesava Pillai
18. ,, T. C. Kesava Pillai
19. ,, T. T. Kesavan Sastri
20. ,, K. P. Kochukora Tharakan
21. ,, Kaviyoor K. K. Kochukunju
22. ,, Thamarappallil Kochu Tommen
23. ,, Puthupalli S. Krishna Pillai
24. Mr. N. R. Krishnan
25. ,, A. K. Kumaran Vaidyan
26. ,, Tariathu Kunjithommen
27. ,, Varkala K. Madhavan
28. Sahib Bahadur M. K. Mackar Pillai
29. Mr. P. V. Mathai Chemparathy
30. Sahib Bahadur P. S. Muhamed
31. Mr. K. Narayanaperumal Nadar
32. ,, R. Narayanan Nambootiri
33. ,, P. G. Narayanan Unnithan
34. ,, M. K. Nilakanta Aiyar
35. ,, P. S. Nilakanta Aiyar.
36. ,, P. Paramesvaran Pillai
37. ,, M. Ramachandra Rao
38. ,, N. Ramakrishna Pillai
39. ,, Codiveetil C. Ramankunju
40. ,, N. Ramiah Pillai
41. ,, E. Subramonia Aiyar
42. ,, G. B. E. Truscott
43. ,, Puliyoor T. P. Velayudhan Pillai
44. ,, N. Velu Achari
45. ,, G. Velu Pillai
46. ,, P. Vivekanandam

NOES—11.

1. Mr. S. Chattanatha Karayalar
2. Srimati K. Devaki Antharjanam
3. Mr. K. G. Govindan
4. ,, M. L. Janardana Pillai
5. ,, K. Kunju Panickar
6. Mr. S. Narayana Pillai
7. ,, P. Narayana Pillai
8. ,, K. R. Narayanan
9. Srimati T. Narayani Amma
10. Mr. P. Sivarama Pillai
11. ,, R. Sivaraman Nair

NEUTRALS—4.

1. Mr. C. Japamony Nadar
2. ,, Kainikkara M. Padmanabha Pillai
3. Mr. M. Sivathanu Pillai
4. ,, J. W. Tolson

Clause 9.

SRY. T. NARAYANI AMMA: Sir, I beg to move that clause 9 be deleted. This is only a consequential amendment to the amendments made to clauses 7 and 8.

SRY. DEVAKI ANTHARJANAM: I Second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: There is no legal objection to clause 9 being deleted.

The amendment was put to vote and carried.

Clause 9 was deleted.

Clause 10.

SRY T. NARAYANI AMMA: Before I move amendment No. 15 I may be allowed to move amendment 16. Because that is consequential to the deletion of clause 9.

PRESIDENT: Yes.

SRY. T. NARAYANI AMMA: Sir, I beg to move that in clause 10 sub clause (i) the following be inserted before the words 'at any time';

"When the Court takes cognizance of any offence under this Regulation upon a complaint, it may." and omit the words "the Court may" between "accused" and "for reasons to be" and renumber Clause 10 as Clause 9.

Sir, this also is only a consequential amendment. The Court can take cognizance of an offence either on a complaint being made, or on its own motion when the complaint is made, the Court examines the complainant first and if the Court is satisfied that a *prima-facie* case is made out it may not ask the complainant to furnish security. But if thinks that the complaint is a frivolous one it may call for security. It is to make this point clear that I move this amendment.

SRY. DEVAKI ANTHARJANAM: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: I see no objection Sir.

The question before the House that clause 10 sub-clause (i) do from part of the bill was put to vote and carried.

The amendment was put to vote and carried.

SRY. T. NARAYANI AMMA: I beg to move that the following be substituted for clause 10 (i)

The Court may, if satisfied from information laid before it through complaint or otherwise, that a child marriage in contravention of this Regulation, has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in Clauses 3, 4, 5, and 6, prohibiting such marriage;

Provided that no injunction under the sub-clause shall be issued against any person unless the court has previously given notice to such person and has afforded him an opportunity to show cause against the issue of the injunction:

Provided also that the Court may on the application of any person aggrieved rescind or alter any order made under this sub-clause".

(ii) Whoever knowing that an injunction has been issued against him under sub-clause (i) of this Clause disobeys such injunction, shall be punished with imprisonment of either description, for a term which may extend to three months, or with fine which may amount to one thousand rupees, or with both."

This is an amendment for the addition of a new clause empowering the court to issue injunction to the parties mentioned in clauses 3 to 6 prohibiting such marriages. It will serve the very useful purpose, of preventing a child marriage. Sir, prevention it is rightly said, is better than cure.

PRESIDENT: There is no question of cure in the present instance. (*Laughter*).

SRY. T. NARAYANI AMMA: If a contemplated child marriage can, by a timely injunction be prevented it is much better than punishing the parties after the marriage has taken place. As the Bill stands, rich persons, may with impurity offend against the law and pay the fine. It is to prevent such wanton breaches of law by rich persons that this amendment is proposed.

Safeguards provided in this clause, are, the issue of a notice and giving opportunity to be heard before issue of injunction. When there is exparte-injunction it can be altered on the application of the aggrieved party. The punishment for disobeying an injunction should be more severe than that of merely committing an offence under this Act. After the passing of this amendment in the Assembly there have been several instances of child marriages being prevented under this clause. I shall now read the report of the (Hindu) dated 29th June 1938.

BENARES WEDDING POSTPONED.

CHILD MARRIAGE RESTRAINT ACT.

(*Associated special service.*)

BENARES, June 29.

A marriage ceremony was postponed at Benares, and the party of the bridegroom which had arrived at the bride's house had to return, at the order of the City Magistrate of Benares under the Child Marriage restraint Act.

The father of the bride stated before the Magistrate that his daughter was 14 years of age, that her marriage was to take place the same day, that the bridegroom had already arrived and that the permission for the marriage ceremony should be given immediately. The bride was examined by the Civil Surgeon who declared that she was 13 years of age. Thereupon, the Magistrate ordered that the ceremony could not take place for one year more under the Child Marriage Restraint Act.

The Magistrate had recently ordered the postponement of the wedding of another girl, aged eleven.

Under these circumstances, I hope the House will, concede the extreme importance and usefulness of this provision and will unhesitatingly accept this amendment.

SRY. DEVAKI ANTHARJANAM: I second it.

MR. JOSEPH VITHAYATHIL : Sir, It is not clear whether it is the Criminal Court or the Civil Court that is meant by the word 'court' occurring in the amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI : In view of the wording of the previous clauses and of this clause itself it is clear that it is the Criminal Court that is referred to.

PRESIDENT : Apparently Mr. Vithayathils' point is that it is the Civil Court that usually grants injunctions.

MR. JOSEPH VITHAYATHIL : Further Sir, the word 'Court' is not defined in this bill.

MR. M. SIVATHANU PILLAI : The word complaint is there. That makes it clear that it refers to a Criminal Court.

MR. JOSEPH VITHAYATHIL : That relates to a different matter. This amendment deals with injunctions which are ordinarily issued by Civil Courts.

And then Sir, if 'Court' in the amendment means Criminal Court, I have very serious objection to this amendment since it is capable of much mischief. In the first place, the purpose intended to be served by this amendment may not be served at all; because after all, there is nothing to prevent the party from disobeying the injunction order and risking punishment for that also. There is nothing in the provision authorising the court to take such steps as are necessary to enforce the injunction order as we have in the case of provisions for the prevention of public nuisance in the Criminal Procedure Code. As I said, if the party is prepared to undergo additional imprisonment or to pay an additional fine for disobeying the injunction order there is nothing to prevent such a party from celebrating a child marriage. Therefore, the real purpose *i. e.* the prevention of child marriage may not be served by this provision.

There is also another practical difficulty. The injunction has to be issued on information laid before the Magistrate. The important question will be whether the bride has actually completed 14 years of age on the date of the marriage. Even a day less would make the marriage an offence. Therefore that important question of fact has to be gone into by the Court before issuing the injunction order. That has to be decided on evidence. Suppose, the Magistrate goes wrong in the finding on the question of age and issues an injunction order what is the remedy of the party? There is no provision for appeal. In Revision the High Court will not enter into questions of fact. There is also no provision enabling the party to move the Civil Court for getting the injunction order cancelled. The consequence may be very serious. I can understand this provision if it is a Civil Court that is empowered to issue such an injunction order.

I would appeal to the House to imagine the anxiety of the parents and the bride and the bridegroom if this provision becomes law. Till the marriage is actually solemnised they will have to remain in anxiety and fear about some mischievous party moving the Magistrate and

causing the issue of an injunction order. It is true that the party has a right to be heard before an injunction order is issued. But in cases in which the girl has just completed 14th the court may accept evidence adduced to show that she is below 14. The appearance of the girl may also mislead the Magistrate. Even if no injunction order is actually issued the mere possibility of such an order being issued is sufficient to cause great anxiety and worry to the parties to the marriage and to the parents. Nothing can be more distressing than the idea of their being dragged into a Criminal Court on the eve of the marriage and an enquiry being conducted with regard to the age of the girl. For these reasons I think that this provision is likely to do more harm than good.

Further, Sir, even in the case of a public nuisance—certainly child marriage is not so harmful to the public as a public nuisance—the alleged offender has the right to move the court and get a Panchayat appointed to go into the facts of the case. There is no such provision here. The party is absolutely helpless.

With these words I strongly oppose the amendment.

MR. M. SIVATHANU PILLAI: Does the member want child marriages to be prevented or allowed?

MR. JOSEPH VITHAYATHIL: It is with a view to prevent child marriages that this legislation is enacted. Child marriage is made an offence and is punished under this Act. The law wants to prevent murder; and for that purpose the Penal Code provides for punishing the murderer. But there is no provision in the Penal Code or in any other law for injunctions being issued against intending murderers with a view to prevent murder. That does not mean that the law encourages the murder.

Sir, in these matters we have to consider the possibility of the civil right of a citizen being infringed. As I said, who is to answer for the damages done to the parties if it ultimately turns out that the bride was 14 years old on the day of the marriage, that the complaint to the Magistrate was false and that full evidence had not been taken before the injunction order was issued? It is for these reasons that I oppose the amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: There is a similar provision in the Child Marriage Restraint Act as recently amended in British India. 'So far as I have been able to see, there is nothing objectionable in accepting the present amendment.

In regard to my friend's objection that it is not clear as to whether it is the Civil Court or the Criminal Court that is meant I have to only refer to clause 8 of the bill as it has been amended. That makes it clear that it is only a criminal court that is meant. The court has to take evidence upon complaint made or information laid. The court has to satisfy itself on information laid before it or complaint made or

[Mr. Puthupalli S. Krishna Pillai.]

otherwise. There cannot therefore be any misconception about the fact that it is a criminal court that is meant. It is not the Civil Court that is intended here; more expeditious remedy through the Criminal Court is proposed. As I said, there is nothing in this provision opposed to any legal principle. No Magistrate will issue an injunction on mere information that a girl to be married is under 14; certainly it will take evidence where necessary and satisfy itself as to the real age of the contracting parties.

Secondly, provision has been made for issue of notice to the parties to the marriage giving them the opportunity, before the order of injunction is issued, to convince the court that the complaint is false.

Thirdly, provision is made for the person aggrieved to apply to the court to rescind or alter any order passed by the court. In view of these three safeguards I do not think the apprehensions entertained by the honourable member Mr. Vithayathil are well founded.

MR. N. RAMAKRISNHA PILLAI: I support the amendment of Srimathi Narayani Amma. In the first place I submit that there is no room for any doubt that the expression 'Court' refers to is the Criminal courts as the basis of its jurisdiction is said to be a complaint or information.

In regard to the main objection of my friend Mr. Vithayathil all that I need submit is that the present bill does not propose to make marriages invalid; it only makes child marriage punishable. Therefore prevention of the Crime is as important as punishment of the offenders. It is in this respect different form murder or other offences in the Penal Code; which are acts wholly illegal under the law. It seems to me therefore necessary to make adequate provision for the prevention of these offences; and the amendment now proposed is a very wholesome provision especially since all the necessary safeguards have been introduced.

MR. JOSEPH VITHAYATHIL: May I ask whether there is no possibility of a Magistrate going wrong?

MR. N RAMAKRISHNA PILLAI: It is not reasonable to suppose that any Magistrate will issue an injunction order straightway on receipt of a complaint, without making the necessary enquiry, especially when it has been specifically provided that such order shall be issued only on the Magistrate satisfying himself that the complaint is well-founded. I do not deny that in very rare cases the Magistrate may go wrong; such mistakes can soon be rectified by the party interested putting in an application for cancelling the injunction order. It is open to the Magistrates to cancel orders once made.

With these words, I support the amendment.

MR. M. SIVATHANU PILLAI: As I was listening to the speech of Mr. Mathew I could not gather what his real point was? I must submit that his argument was not quite clear to me. At first he argued that the present amendment did not go far enough effectively to prevent

child marriages since it would only mean additional punishment for disobedience of the injunction order. Immediately after that argument he raised another objection *viz.* that the Magistrate may go wrong. Am I to take it that my honourable friend Mr. Mathew was not satisfied with the offenders under this bill being punished and that he wants child marriages to be effectively prevented? I may just point out to him that, in view of his own doubt that Magistrate are liable to go wrong, the consequence would be disastrous if marriages are effectively prevented. The present amendment avoids such serious consequences by only prescribing punishment for disobedience of the injunction order. My friend Mr. Mathew suggested.........

PRESIDENT: Honourable members are expected to know each other's names.

MR. M. SIVATHANU PILLAI: I am sorry, Sir. My friend Mr. Joseph Vithayathil pointed out that the Magistrate should be given the power to prevent child marriages effectively. Suppose that is done and it turns out later on that the girl had really completed 14 before the day of the marriage. The effective prevention of the marriage by the Magistrate would have caused serious damage and injury to the parties concerned who are really not at fault It is here in such cases the amendment now proposed is very wholesome since it stops within reasonable limits. I was really surprised at my friend referring to the provision in the Penal Code regarding the matter of punishment. Sir, the object of punishment is to deter people from committing offences. That is so in the present enactment also. This amendment is interded as a further deterrent to the provision already contained in the bill. I do not feel why my friend Mr. Vithayathil has thought it fit to object to this amendment.

SRIMATHI T. NARAYANI AMMA: Since sufficient safe-guards have been provided for, in this amendment, I do not think there is any justification for such forebodings as those of the honourable member who has opposed the amendment. The same amendment has been passed in the Imperial Assembly after prolonged debate and mature deliberations and experience in British India shows that it is a very useful provision. I therefore press the amendment.

The amendment was put to vote and carried.

PRESIDENT: At an earlier stage it was decided to take up amendment No. 5 after this amendment was disposed of as it is a consequential amendment.

SRIMATHI T. NARAYANI AMMA: Sir, I beg to move the following amendment:

> In clause 2 sub-clause (c), between the words "is" and "thereby", the words "or, is about to be" shall be inserted.

PRESIDENT: It is a consequential amendment.

SRIMATHI T. NARAYANI AMMA: Yes, Sir. Its object is obvious *viz.*, to include marriages about to be performed also within the scope of the bill.

SRIMATHI DEVAKI ANTHARJANAM: I second it.

The amendment was put to vote and carried.

The question that clause 10 as amended do form part of the bill was put to vote and carried.

The clause was added to the bill.

MR. P. S. NILAKANTA AIYAR: Sir, I beg to move the following amendment:

"11 (i) Whoever being above fifty years of age contracts a marriage with a minor shall be punishable with imprisonment of either description which may extend to seven years and shall also be liable to fine.

11 (ii) Any person who performs, conducts or directs such marriage and the person in charge of such minor under circumstances referred to in Section 5 and Section 6 (1) respectively shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

PRESIDENT: Fixing the age of a person between 45 and 55 is rather very risky.

MR. P. S NILAKANTA AIYAR: I submit, Sir, that my amendment is absolutely necessary since it advances further the object for which the present measure is being enacted.

PRESIDENT: Does the honourable member realise the significance of this amendment. Suppose a senile person over fifty contracts a marriage; the marriage is *a fait accompli*, and the husband goes to the jail for 7 years. What is to happen to the girl? (*Laughter*)

MR. P. S. NILAKANTA AIYAR: There have been many unfortunate instances of old men contracting marriages with minor girls and leaving child widows absolutely helpless with a number of children to maintain.

MR. PUTHUPALLI S. KRISHNA PILLAI: I rise to a point of order. Sir, the word 'child' has been defined in this bill as a girl under 14 or under 16; and the object of this bill is to restrain child marriages. The present amendment deals with the marriage of minor girls which includes also girls between the ages 14 and 18. That, I submit, is beyond the scope of the bill. The amendment therefore is out of order.

PRESIDENT; About girls between 14 and 16? The amendment will be in order so far it relates to them.

MR. PUTHUPALLI S. KRISHNA PILLAI: It is not the purpose of the bill to deal with girls above 14.

PRESIDENT: Apart from all that, the honourable member I am sure, will be the first to perceive that the difficulties in the way of the provision he contemplates are very serious; and if really he wants such a provision he should bring in a separate bill. Let us just contemplate for a moment the result of such a provision as he now brings forward. A Gentleman above fifty marries a girl of, let us say, fifteen and marriages under Hindu Law once they are performed according to certain

rates, are sacraments and cannot be ended by divorce or by any other similar means. Now, what would happen to such marriages? The old husband would go to the jail for seven years and the young girl between 14 and 18 would be waiting outside for the old man to get older and older inside the jail (*Laughter.*) I hope the honourable member will realise that. Does he really press the amendment?

MR. P. S. NILAKANTA AIYAR: No Sir, I do not press it.

SRIMATHI T. NARAYANI AMMA: Sir, I beg to move that the bill a amended by this House be now passed.

MR. PUTHUPALLI S. KRISHNA PILLAI: I object, Sir. A number of amendments have been passed and it is not safe that we proceed with the third reading forthwith.

PRESIDENT: The Legal Remembrancer is right. It very often happens that in form and language many of the amendments are not quite accurate. It is better that the law officers of the Government are given some time to put this amendment in proper form. After all we have only about a month more for the next meeting of this House. The bill can be passed at our next meeting.

SRIMATHI T. NARAYANI AMMA: Yes Sir.

THE TRAVANCORE AGRICULTURISTS' RELIEF ACT (*Amendment*) BILL.

MR. JOSEPH VITHAYATHIL: In view of the steps taken by the Government in the matter I would request, Sir, that the bill be postponed.

MR. T. P. VELAYUDHAN PILLAI: Since the bill has not yet been introduced no postponement arises now.

PRESIDENT: What Mr. Vithayathil says is that that business on the agenda may be postponed.

The question of the postponement of the bill was put to vote and carried.

THE TRAVANCORE CHITTIES ACT (*Amendment*) BILL.

MR. E. P. VARGHESE: Sir, I beg leave to introduce the Travancore Chitties Act (Amendment) Bill.

MR. KOTTALIL P. ABRAHAM: I second it.

MR. N. R. KRISHNAN: ഞാൻ ഈ ബില്ലിനെ എതിർക്കുന്നു. സാമ്പത്തികാധഃപതനംകൊണ്ട് ബുദ്ധിമുട്ടുന്ന ഈ അവസരത്തിൽ ചിറ്റാളരെ സഹായിക്കുന്നതിനു കൊണ്ടുവന്നിട്ടുള്ളതാണ് ഇത്. ചിറ്റാളർക്കു ഗുണകരമായ പല സംഗതികളും ഇപ്പോൾ നിലവിലിരിക്കുന്ന നിയമത്തിൽത്തന്നെയുണ്ട്. ആ സ്ഥിതിക്കു വീണ്ടുംവീണ്ടും ഇങ്ങനെ നിയമം ഉണ്ടാക്കേണ്ട ആവശ്യമില്ല. ചിട്ടിറെഗുലേഷൻ ൪൯-ാംവകുപ്പിൽ ഇങ്ങനെ പറയുന്നു.

PRESIDENT: Does the honourable member think it really necessary to go into the details of the question, in view of the fact that Mr. Verghese is now only asking the leave of the House to introduce the Bill? The Bill will be on the agenda of the House only if such leave is granted; and in the mean time the Committee that the Government have appointed will function and discuss the matter.

MR. N. R. KRISHNAN: ഇപ്പോൾ നിലവിലിരിക്കുന്ന സിവിൽനടപടി നിയമത്തിൽ വിസ്തൃതമായ അധികാരങ്ങൾ കൊടുത്തിട്ടുണ്ട്.

PRESIDENT: Asking for leave is only a preliminary stage.

MR. N. R KRISHNAN: ഇപ്പോൾ നിലവിലിരിക്കുന്ന നിയമത്തിൽത്തന്നെ വേണ്ട രക്ഷകളുണ്ട്. പ്രതിമാസം ഒരു രൂപ വയ്ക്കേണ്ട ചിററാളൻ മുടക്കം വരുത്തുന്നു എന്നു വിചാരിക്കുക.

MR. T. P. VELAYUDHAN PILLAI: Sir, I rise to a point of order By Standing Order 31 the member is not in order when he makes a speech in opposing the motion for leave being granted.

PRESIDENT: What he can do is just to express his opposition. Brevity is a matter of degree.

MR. N. R. KRISHNAN: ഒരു രൂപാക്രമത്തിനു നൂറു തവണ വയ്ക്കേണ്ട ഒരു ചിററാളൻ മുടക്കംവരുത്തിയാൽ ഇപ്പോഴത്തെ ബില്ലിൻപ്രകാരം ഓരോ രൂപായ്ക്കും ഓരോ വ്യവഹാരം കൊടുക്കേണ്ടിയിരിക്കുന്നു. അതിന് കോടതിച്ചിലവ് ൨ രൂപയാകും. ഇങ്ങനെ നൂറു രൂപ ഈടാക്കി എടുക്കുന്നതിന് ൨൦൦ രൂപാ ചെലവുവരുന്നു. ഈ തരത്തിലുള്ള ചെലവു വരുത്തുന്നത് വലിയ അക്രമമാണ്.

PRESIDENT: Order, order. A point of order has been raised and the honourable member know that if a motion for leave to introduce a Bill is opposed I may have to allow a brief explanatory statement to be made by the member who moved the motion. I have given full latitude to the honourable member. So he may curtail his remarks and finish soon.

MR. N. R. KRISHNAN: ഇപ്പോൾ നിലവിലിരിക്കുന്ന നിയമത്തിൽത്തന്നെ വിസ്തൃതമായ അധികാരങ്ങൾ ഇരിക്കുന്നതുകൊണ്ട് അതിലേക്ക് വേറെ നിയമം ആവശ്യമില്ലെന്നാണ് എന്റെ അഭിപ്രായം.

MR. E. P. VARGHESE: I shall explain the object of my Bill as briefly as possible. It is not intended to make provision for instalment payments. The honourable member who opposed the Bill seems to have quite misunderstood the purport of this Bill. It is to give relief to the prized subscribers who have defaulted that I have brought this amendment.

The amendment Bill that is now proposed to be introduced is meant as a relief to the defaulted prized subscriber. According to this Bill, when a foreman files a suit for chitty subscriptions, he can file the suit only for those instalments which have been defaulted till the date of filing of the suit. He cannot claim or sue for a decree for all the instalments defaulted and future from the date of the default in a lump sum, as is the practice now-a-days. The honourable member's contention that to realise 100 instalments the foreman will have to file 100 suits is a *reductio ad absurdum* of the provisions of the Bill. This amendment Bill is meant as a measure purely of relief to the prized subscriber from the penal clauses of the usual chitty bonds. According to this Bill the foreman cannot claim or sue for anything more than the defaulted instalments with interest thereon. In the statement of objects and reasons I have mentioned why this Bill has now been brought. It is because chitties form the bulk of the debts of the people of this land and the abnormal fall in the price of commodities has brought about such a situation.

The question that leave be granted to Mr. E. P. Varghese to introduce the Travancore Chitties Act Amendment Bill was put and carried and leave was granted.

RESOLUTIONS.

MR. K. P. KOCHUKORA THARAKAN: Sir, I beg to move the following resolution :

> "This Assembly recommends to Government that when fresh appointments are made either by the Public Service Commissioner or Government, on the basis of communal representation, preference be given to applicants from unrepresented areas giving recognition to territorial representation also without pre-judice to the principle of communal representation."

സമുദായ പ്രാതിനിധ്യതത്വത്തിന് ബാധകമല്ലാത്തവിധത്തിൽ പ്രാദേശിക പ്രാതിനിധ്യത്തെക്കൂടി പരിഗണിച്ച് ഉദ്യോഗനിയമനം നടത്തണമെന്നുള്ളതാണ് എന്റെ പ്രമേയത്തിന്റെ ഉദ്ദേശം. നിയമനാധികാരമുള്ള ഉദ്യോഗസ്ഥന്മാരുടെ ബന്ധുക്കൾക്കും ചാർച്ചക്കാർക്കും മാത്രമെ ഉദ്യോഗം ലഭിക്കുന്നുള്ളു എന്ന് മുറവിളി കൂട്ടിയതിന്റെ ഫലമായിട്ട് പബ്ളിക്ക് സർവീസ് കമ്മീഷണരെ നിയമിച്ചു. എന്നാൽ പബ്ളിക്ക് സർവീസ് കമ്മീഷണരുടെ നിയമനത്തിൽ ഈ രാജ്യത്തെ എല്ലാ പ്രദേശങ്ങളിലുമുള്ളവർക്ക് ഉദ്യോഗം ലഭിക്കുന്നില്ല. ഉദ്യോഗസ്ഥന്മാർ കൂടുതൽ ഉള്ള സ്ഥലങ്ങളിലുള്ളവരെത്തന്നെ വീണ്ടും നിയമിക്കുകയും ഉദ്യോഗസ്ഥന്മാരില്ലാത്ത പ്രദേശങ്ങളിലുള്ളവരെ ആരേയും നിയമിക്കാതിരിക്കുകയും ചെയ്തുവരുന്നു. ഇങ്ങിനെ ഒരു പ്രദേശത്തുള്ളവർ മററു പ്രദേശങ്ങളിലുള്ളവരെ എല്ലാവരേയും അടക്കി ഭരിക്കുന്നത് വളരെ സങ്കടമായിട്ടുള്ളതാണ്. ഉദ്യോഗസ്ഥന്മാർ ധാരാളമുള്ള സ്ഥലങ്ങളിൽ ആ നാട്ടുകാർക്ക് ആവശ്യമുള്ള റോഡ്, തോട്, പാലം

[Mr. K, P. Kochukoratharakan]

മുതലായ സകല സൗകര്യങ്ങളും വേണ്ടുവോളം ഉള്ളതായി കാണാവുന്നതാണ്. ഉദ്യോഗസ്ഥന്മാർ കുറവായ സ്ഥലത്ത് ഈവക സൗകര്യങ്ങളൊന്നും തന്നെ ഇല്ലെന്നുമാത്രവുമല്ല, അടുത്തകാലത്തെങ്ങും കിട്ടാനുള്ള മാർഗ്ഗങ്ങളോ സൗകര്യങ്ങളോ കാണുന്നില്ല. അതുകൊണ്ട് സമുദായപ്രാതിനിധ്യത്വം എന്നപോലെ പ്രദേശികപ്രാതിനിധ്യത്വം' അനുസരിച്ചും ഉദ്യോഗനിയമനം നടത്തേണ്ടത് രാജ്യത്തിന്റെ പൊതുനന്മയ്ക്ക് എത്രയും അത്യാവശ്യമായിട്ടുള്ളതാണ്. സമുദായപ്രാതിനിധ്യത്വം ആവശ്യപ്പെട്ടപ്പോൾ പ്രാതിനിധ്യമുള്ള സമുദായത്തിൽപെട്ടവർ എതിർക്കുകയും ആക്ഷേപിക്കയും ചെയ്തതുപോലെ ഈ സംഗതിയിലും പ്രാദേശിക പ്രാതിനിധ്യമുള്ളവരുടെ എതിർപ്പും ആക്ഷേപവും ഉണ്ടാകുമെന്നുള്ളത് ഞാൻ വിസ്മരിക്കുന്നില്ല. സമുദായപ്രാതിനിധ്യത്വത്തെ എതിർത്ത സ്ഥിതിയ്ക്ക് പ്രാദേശിക പ്രാതിനിധ്യവാദത്തേയും എതിർക്കുമെന്നുള്ളത് തീർച്ചയാണ്. പുതിയ ഉദ്യോഗങ്ങൾ ഒഴിവുവരുമ്പോൾ ഉദ്യോഗസ്ഥന്മാർ കുറവുള്ള സ്ഥലങ്ങളിൽനിന്നും സമുദായ പ്രാതിനിധ്യമനുസരിച്ച് ആളുകളെ തിരഞ്ഞെടുത്തു നിയമിക്കണം. ഈ രീതിയിൽ ഒരു പത്തുവർഷം നിയമനം നടന്നാൽ എല്ലാ സ്ഥലത്തുള്ളവർക്കും ഉദ്യോഗം ലഭിക്കും.

MR. P. S. MUHAMED: സമുദായപ്രാതിനിധ്യത്വത്തെ മാററിയിട്ടു പ്രാദേശികപ്രാതിനിധ്യവാദം കൊണ്ടുവരണമെന്നാണൊ അഭിപ്രായം?

MR. K .P. KOCHUKORA THARAKAN: എന്നു ഞാൻ പറഞ്ഞില്ല. സമുദായപ്രാതിനിധ്യത്വമനുസരിച്ച് ഉദ്യോഗനിയമനം നടത്തുമ്പോൾ ഉദ്യോഗസ്ഥന്മാരില്ലാത്ത പ്രദേശങ്ങളിലെ ആളുകളെക്കൂടി പരിഗണിച്ചു നിയമിക്കണമെന്നുമാത്രമെ പറയുന്നുള്ളു. അല്ലാതെ സമുദായപ്രാതിനിധ്യത്വത്തെ കളഞ്ഞിട്ട് പ്രാദേശികപ്രാതിനിധ്യം കൊണ്ടുവരുന്നില്ല. ഉദ്യോഗസ്ഥന്മാരുടെ ഒരു സർവെ എടുക്കുന്നതായാൽ ഈ സംഗതിയിൽ എത്രത്തോളം വാസ്തവമുണ്ടെന്നു വ്യക്തമാകുന്നതാണ്. ഉദ്യോഗസ്ഥന്മാരുടെ ഒരു സെൻസസ് എടുത്താൽ ഏതെല്ലാം സ്ഥലങ്ങളിൽ ഉദ്യോഗസ്ഥന്മാർ കൂടുതലുണ്ടെന്നും എവിടെയെല്ലാമാണു കുറവുള്ളതെന്നും അറിയാവുന്നതാണ്. രാജ്യത്തിന്റെ ഏതുഭാഗത്തു താമസിച്ചാലും ഉദ്യോഗവിഷയത്തിൽ ന്യായമായ പങ്കുണ്ടായിരിക്കേണ്ടതാണു. ഈ വിഷയത്തെപ്പററി നിയമസഭയുടെ പൊതുവായ അഭിപ്രായം എന്താണെന്നറിയാൻ ഇതുവരെ സൗകര്യം ഉണ്ടായിട്ടില്ല. ഇപ്പോൾ അതിലേക്ക് ഒരു സന്ദർഭം ലഭിച്ചതിനു വളരെ സന്തോഷമുണ്ട്. സമുദായ

പ്രാതിനിധ്യതത്വത്തെ എതിൎക്കുന്നതുപോലെ ഈ വിഷയത്തിൽ മാന്യ മെംബറന്മാർ എതിൎക്കുകയില്ലെന്നു വിശ്വസിക്കുന്നു. എല്ലാ പ്രദേശങ്ങളിലുമുള്ളവൎക്കും ഉദ്യോഗം ലഭിക്കണം. എന്റെ താലൂക്കിൽനിന്നും ചില അദ്ധ്യാപകന്മാർ മാത്രമുള്ളതല്ലാതെ പറയത്തക്ക ഉദ്യോഗസ്ഥന്മാർ ആരുംതന്നെയില്ല. ഗസറ്റെഡ് ഉദ്യോഗസ്ഥന്മാർ ആരുംതന്നെ ഇല്ലെന്നു പറയാം.

അദ്ദേഹം പറവൂർകാരൻ എന്നു മാത്രമല്ലാതെ താമസം വേറെയാണ്. ഗസറ്റെഡ് ആഫീസറായി കുന്നത്തുനാട്ടു താലൂക്കിൽനിന്നും ആരേയും നിയമിച്ചിട്ടില്ല. എന്റെ നിയോജകമണ്ഡലത്തിൽ ഉൾപ്പെട്ട വല്ലസ്ഥലത്തും ചുരുക്കം വല്ലവരെയും ഉദ്യോഗസ്ഥന്മാരായി കാണുമായിരിക്കാം. പറവൂർ താലൂക്കിൽനിന്നും തന്നെ കൈവിരൽകൊണ്ടു എണ്ണത്തക്ക ഉദ്യോഗസ്ഥന്മാരെ കാണുകയില്ല.

അതുകൊണ്ടു ഈ വിഷയത്തിൽ ഗവണ്മെന്റിന്റെ ദയാദൃഷ്ടി പതിഞ്ഞു് ഉദ്യോഗസ്ഥന്മാരുടെ ഒരു സെൻസസ് എടുത്തു് ഉദ്യോഗസ്ഥന്മാർ കൂടുതലും കുറവുമുള്ള സ്ഥലങ്ങൾ കണ്ടുപിടിച്ചു് ഉദ്യോഗസ്ഥന്മാർ കുറവായ സ്ഥലങ്ങളിലുള്ള ആളുകളെ നിയമിക്കണമെന്നു് ഞാൻ ഗവണ്മെന്റിനെ ഉൽബോധിപ്പിച്ചുകൊള്ളുന്നു.

PRESIDENT : Has the member finished?

MR. K. P. KOCHUKORA THARAKAN : Yes, Sir.

MR. KOTTALIL P. ABRAHAM : I second it.

MR. KUMARAN VAIDYAN : ഞാൻ ഈ പ്രമേയത്തെ അനുകൂലിക്കുന്നു. വടക്കൻ തിരുവിതാംകൂറിൽ നിന്നും ഉദ്യോഗസ്ഥന്മാരായി ആരുമില്ല. തിരുവനന്തപുരത്തു താമസിക്കുന്നവൎക്കു മാത്രമെ പബ്ളിക്ക് സൎവീസ് കമ്മീഷണരിൽ നിന്നും നിയമനം ലഭിക്കുന്നുള്ളു. മററു സ്ഥലത്തു താമസിക്കുന്നവൎക്കു അതുകൊണ്ടു യാതൊരു പ്രയോജനവും സിദ്ധിക്കുന്നില്ല. അതുകൊണ്ടു മി. തരകന്റെ അഭിപ്രായത്തോടു ഞാൻ യോജിച്ചുകൊള്ളുന്നു.

MR. P. S. MUHAMED : സർ, ഈ പ്രമേയത്തെ ഞാൻ ശക്തിയായി എതിൎക്കുന്നു. ഈ സഭയിൽ ഇതുവരെ ഉദ്യോഗ നിയമനത്തെപ്പററിയുള്ള വാദങ്ങൾ സമുദായത്തിന്റെ പേരിലാണ് നടന്നിട്ടുള്ളതു്. ഈ അവസരത്തിൽ പ്രാദേശിക പ്രാതിനിധ്യവാദംകൂടി കൊണ്ടുവന്നതു്

സമുദായപ്രാതിനിധ്യതത്വമനുസരിച്ചു ഗവണ്മെന്റു ചെയ്തുവരുന്ന ചില ആനുകൂല്യങ്ങളെ നശിപ്പിക്കുന്നതു് നല്ലയൊ എന്നു് ഞാൻ ബലമായി സംശയിക്കുന്നു.

MR. K. P. KOCHUKORA THARAKAN : സാമുദായികപ്രാതിനിധ്യതത്വത്തിനു് വിഘാതം വരത്തക്കവിധത്തിൽ പ്രവർത്തിക്കണമെന്നു് ഞാൻ പറഞ്ഞില്ലായെന്നു് ഓർമ്മിക്കുന്നുണ്ടോ?

MR. P. S. MUHAMED: അതുമനസ്സിലാക്കിക്കൊണ്ടു തന്നെയാണു് ഞാൻ പറയുന്നതു്. ഉദ്യോഗവിഷയത്തിൽ പിന്നോക്കം നിൽക്കുന്ന സമുദായക്കാർക്കു് ഇന്നു കിട്ടിക്കൊണ്ടിരിക്കുന്ന ആനുകൂല്യം ഇല്ലാതാകുമെന്നുള്ളതിനു് സംശയമില്ല. കൂടാതെ, ഈ വാദം മൂത്തു്മൂത്തു് സമുദായപ്രാതിനിധ്യം, പ്രാദേശിക പ്രാതിനിധ്യം, താലൂക്കു്, പകുതി, വീടു് ഇവയ്ക്കുംകൂടി പ്രാതിനിധ്യം വേണമെന്നു വരികയില്ലേ എന്നുകൂടി ഞാൻ സംശയിക്കുന്നു. ഈ തരത്തിലുള്ള പ്രാതിനിധ്യം ആവശ്യപ്പെടുന്നതു ന്യായമാണെന്നുതോന്നുന്നില്ല. സമുദായപ്രാതിനിധ്യതത്വത്തിൽ കാര്യക്ഷമത അവഗണിക്കപ്പെടണമെന്നില്ലാഎന്നു നാം എല്ലാവരും സമ്മതിച്ചിട്ടുള്ളതാണു്. അതിന്റെ കൂടെ ഈ ഏടാകൂടംകൂടി വരുത്തിവച്ചാൽ ആകപ്പാടെ വിഷമം വരുമെന്നുമാത്രമല്ലാ ഇതുവരെ നാം ഏതു സംഗതിക്കു വേണ്ടിശ്രമിച്ചുവൊ, ആ ശ്രമങ്ങളെല്ലാം നിഷ്ഫലമായിത്തീരുന്നതുമാണു്. അതുകൊണ്ടു ഞാൻ ഈ പ്രമേയത്തെ എതിർക്കുന്നു.

MR. K. P. KOCHUKORA THARAKAN : പ്രാദേശിക പ്രാതിനിധ്യവാദത്തിൽ എഫിഷ്യൻസ്സി അനുസരിച്ചു പ്രവർത്തിക്കരുതെന്നാ?

MR. P S. MUHAMED :— പ്രവർത്തിക്കാം.

PRESIDENT : Order, Order. The House will now adjourn and meet again at 2 o' clock.

The House rose for lunch at 1 P. M. and re-assembled at 2 P. M.

(Mr. C. Kumara Das Director of Industries took the oath and signed the Rolls.)

PRESIDENT : It has been brought to my notice that an honourable member of this House has published certain statements regarding the proceedings of the Select Committee appointed to consider the Kammala and Viswakarma Bills and that he is alleged to have made imputations against the impartiality of some honourable members of the Committee and has also offered criticisms of the attitude taken by the Select Committee in the course of some of its decisions. It may

be remembered that neither the interim nor the final report has been submitted by the Select Committee for the consideration of the House nor has the work of the Select Committee been concluded. It is no doubt a breach of the privileges of this House that any honourable Member, above of all, an honourable Member who is a member of the Select Committee, should make any observation on the conduct of his fellow-members on the Select Committee and also make himself responsible for possible imputations as to the impartiality of the Select Committee on which the legislative work so much depends. I have had occasion to see the honourable Member and he has assured me that he is sorry for what has happened and that he is alive to the importance of preserving the dignity, the impartiality and the prestige of the Select Committee. I feel convinced that he has taken this course probably because he has not been fully aware of the implications of what has been done. In these circumstances and in the confident hope that all the members of the Select Committee and all the members of this House and the public will realise that it is important not only to keep the proceedings of the Select Committee meeting confidential in so far as the actual proceedings are concerned but also to give the utmost assistance and help to the Committee in the matter of preserving its dignity and impartiality I am content with warning the honourable Member.

MR. N. JOHN JOSEPH: സർ, ബഹുമാനപ്പെട്ട മെംബർ മി. കെ. പി. കൊച്ചുകോരത്തരകൻ കൊണ്ടുവന്നിരിക്കുന്ന പ്രമേയത്തെ ഞാൻ എതിർക്കുന്നു. പ്രാദേശിക പ്രാതിനിധ്യമനുസരിച്ച് നിയമനങ്ങൾ വർഗീയ പ്രാതിനിധ്യതോതിൽ നടത്തണമെന്നുള്ളതാണ് അദ്ദേഹത്തിന്റെ പ്രമേയസാരം. വർഗീയപ്രാതിനിധ്യമനുസരിച്ചുള്ള സമുദായ വിഭജനത്താൽതന്നെ വളരെ വൈകല്യങ്ങൾ നേരിടുന്നുണ്ട്. അവശ സമുദായങ്ങൾക്കും ന്യൂനപക്ഷസമുദായങ്ങൾക്കും, വർഗ്ഗീയപ്രാതിനിധ്യമനുസരിച്ചുള്ള നിയമനസംബന്ധമായ കാര്യങ്ങളിൽ, യാതൊരു പ്രയോജനവുമില്ലെന്നു ബഹുമാനപ്പെട്ട ഗവൺമെന്റിനെ ഞാൻ അറിയിച്ചുകൊള്ളുന്നു. വിശിഷ്യാ ക്രിസ്ത്യാനികളുടെ ഇടയിൽതന്നെയുള്ള വർഗ്ഗീയ പ്രാതിനിധ്യവിഭജനം തീരെ ശരിയല്ല. ഇങ്ങനെ ശരിയല്ലാതിരിക്കുന്ന പ്രാതിനിധ്യവിഭജനമനുസരിച്ചു നിയമനം നടത്തണമെന്നു സവർണ്ണ ക്രിസ്ത്യാനികൾ ആരെങ്കിലും ഗവൺമെന്റിനെ ഉൽബോധിപ്പിക്കുന്നുവെങ്കിൽ അത് അവശ സമുദായക്രിസ്ത്യാനികളുടെ അവകാശത്തെ ചൂഷണം ചെയ്യുകയാണെന്നുവേണം വിചാരിക്കാൻ. ഇപ്പോഴത്തെ വിഭജനംകൊണ്ട് അവശ ക്രിസ്ത്യാനികളുടെ ഇടയിൽ പരീക്ഷായോഗ്യതയുള്ളവർക്കു ഉദ്യോഗം കിട്ടാൻ വളരെ വിഷമമായിട്ടാണിരിക്കുന്നത്.

ഈ സംഗതികളെപ്പററി എല്ലാം അവശസമുദായ പ്രതിനിധികൾ ഈ സഭയിൽവച്ചുതന്നെ ഗവണ്മെൻറിൻെറ ശ്രദ്ധയിൽ കൊണ്ടുവരികയും മെമ്മോറിയൽ മുഖാന്തിരം ഗവണ്മെൻറിനെ അറിയിക്കയും ചെയ്തിട്ടുണ്ട്. ക്രിസ്ത്യാനികളുടെയിടയിൽ സാമുദായവിഭജനം ചെയ്തിരിക്കുന്നതു് യഥാർത്ഥത്തിൽ അവശസമുദായ ക്രിസ്ത്യാനികളുടെ അവകാശത്തിനു പരിരക്ഷ നൽകുന്നില്ലെന്നുള്ള സംഗതി ഗവണ്മെൻറ് ശ്രദ്ധിക്കാതെ ഇങ്ങനെയുള്ള പ്രമേയമനുസരിച്ചു് എന്തെങ്കിലും ആനുകൂല്യം ചെയ്താൽ അതു് അവശസമുദായങ്ങളുടേയും ന്യൂനപക്ഷസമുദായങ്ങളുടേയും അവകാശത്തിനു മനഃപൂർവം വിഘാതം വരുത്തുകയാണോ എന്നു തോന്നിപ്പോകും.

അതുകൊണ്ടു് ഇങ്ങനെയുള്ള ഒരു പ്രമേയത്തെ എതിർക്കാതിരിക്കാൻ നിവൃത്തിയില്ല. അവശസമുദായ ക്രിസ്ത്യാനികൾക്കും മററു ന്യൂനപക്ഷ സമുദായങ്ങൾക്കും വർഗ്ഗീയപ്രാതിനിധ്യമനുസരിച്ചു് അവരുടെ പരീക്ഷായോഗ്യതകൾ തക്കവണ്ണം ഉദ്യോഗം കിട്ടത്തക്ക നിലയുണ്ടായിരുന്നാൽ ഈ പ്രമേയത്തിൽ വൈമനസ്യം കാണിക്കാതെ ഇരിക്കാമായിരുന്നു. ഇത്രയും പ്രസ്താവിച്ചുകൊണ്ടു് ഈ പ്രമേയത്തെ ഞാൻ എതിർക്കുന്നു.

MR. K. P. ABRAHAM: അവശസമുദായക്കാരില്ലാത്തതായ ഏതെങ്കിലും ഒരു പ്രദേശം തിരുവിതാംകൂറിലുള്ളതായി മെമ്പർക്കറിയാമോ?

MR. N. JOHN JOSEPH: ചോദ്യം ഞാൻ കേട്ടില്ല.

MR. M. SIVATHANU PILLAI: I move that the question be now put.

PRESIDENT: The question now before the House is that the resolution under discussion be now put to the vote of the House.

The motion was put and carried.

MR. KAINIKKARA M. PADMANABHA PILLAI: We would like to hear the Official member on the resolution.

PRESIDENT: But the House has approved that the question be now put.

MR. KAINIKKARA M. PADMANABHA PILLAI: It was done on the understanding that the official member will reply. Moreover that was the convention.

PRESIDENT: It is not necessary.

The resolution was put to vote and declared lost.

MR. K. P. KOCHUKORA THARAKAN: I demand a poll. A poll was taken with the following result.

AYES—11

1 Mr. Kottalil P. Abraham
2 ,, Joseph Vithayathil
3 ,, M. Kesava Panickar
4 ,, T. T. Kesavan Sastri
5 ,, K. P. Kochukora Tharakan
6 ,, Kaviyoor K. K. Kochukunju
7 Mr. A. K. Kumaran Vaidyan
8 ,, Thariathu Kunjithommen
9 Sahib Bahadur M. K. Mackar Pillai
10 Mr. P. V. Mathai Chemparathy
11 ,, K. R. Narayanan

MR. M. SIVATHANU PILLAI: Sir, on a point of order. Can the members change their minds at the time of voting?

PRESIDENT: Until the Secretary begins to call the particular member he can make his chance of voting for or against. After his name is passed over, the member cannot change his mind.

NOES—36.

1 Mr. P. C. Adichan
2 Sahib Bahadur V. Chandamiah
3 Mr. S. Chattanatha Karayalar
4 Srimathi K. Devaki Antharjanam
5 Mr. E. E. Pandarathil
6 ,, K. G. Govindan
7 ,, S. Govinda Pillai
8 ,, Kannanthodath Janardanan Nair
9 ,, N. John Joseph
10 ,, M. G. Kesava Pillai
11 ,, T. C. Kesava Pillai
12 ,, N. R. Krishnan
13 ,, M. K. Nilakanta Aiyar
14 ,, M. Govinda Pillai
15 ,, P. G. Narayanan Unnithan
16 ,, A. Gopala Menon
17 ,, G. B. E. Truscott
18 ,, Puthupalli S. Krishna Pillai
19 Mr. C. Kumara Das
20 ,, M. P. Joseph
21 ,, P. Parameswaran Pillai
22 ,, K. Kunju Panickar
23 ,, Varkala K. Madhavan
24 Sahib Bahadur P. S. Muhamed
25 Mr. N. Narayana Kurup
26 ,, S. Narayana Pillai
27 ,, P. Narayana Pillai
28 Srimathi T. Narayani Amma
29 Mr Kainikkara M. Padmanabha Pillai
30 ,, Codiveetil C. Raman kunju
31 ,, M. Ramiah Pillai
32 ,, P. Sivarama Pillai
33 ,, R. Sivaraman Nair
34 ,, M. Sivathanu Pillai
35 ,, Puliyoor T. P. Velayudhan Pillai
36 ,, G. Velu Pillai

NEUTRALS—7

1 Mr. K. Dominic Joseph
2 ,, D. Francis
3 ,, C. Jebamony Nadar
4 ,, N. V. Joseph
5 Mr. P. Kunjukrishnan
6 ,, R. Narayanan Nambootiri
7 ,, N. Velu Achari

The resolution was declared lost, 11 voting for, 36 against, and 7 neuteral.

RESOLUTION No. 2.

PRESIDENT: Mr. Narayanaperumal Nadar.

MR. K. NARAYANAPERUMAL NADAR: I don't move my resolution, Sir.

PRESIDENT: Especially when federal matters are under discussion, it will be embarassing the Government if Mr. Narayanaperumal Nadar had moved his resolution for discussion. On behalf of the House as well as Government, let me thank the Honourable member for not moving his resolution.

Working hours of the Arrack and Toddy shops.

MR. K. NARAYANAPERUMAL NADAR: Sir, I move the following resolution:

> "This Assembly recommends to Government that the working hours of the Arrack and Toddy shops should be shortened from 9 P. M. to 6 P. M."

I do not think any argument is necessary on my part to convince the House of the necessity for introducing a scheme by which th drink evil could be reduced. The demand I have raised in the resolution is a moderate one. The labourers after returning from the workshop visit the toddy shops first and then only return home. There should be no scope for them to visit the toddy shops after their labour hours. This is my first point.

PRESIDENT: According to the terms of the resolution, does the member want a labourer to visit the toddy shop during its working hours?

MR. N. NARAYANAPERUMAL NADAR: I do not hear the question. As I said, a labourer visits the toddy shop after his work and spends all the money in his possession. When he returns home, his family gets no money. There is actual starvation in his house. Generally. a labourer returns home at 9 p. m. Before he comes, his family would have got the necessary vegetables and cooked food for him. Instead of the food, he drinks toddy and returns home at 11 or 12 in midnight. That is the situation.

Secondly, a labourer after his drink, commits public nuisance. In day time, there is no such thing ordinarily. During night, the labourers abuse all sorts of respectable persons and thus spend their days. A question might be asked whether complaints on this account could not be lodged with the Police for due action. That could be done. But there is one difficulty. In rural parts, unfortunately, it is the Police Officer who drinks and causes abuse on respectable men in the locality. I am sorry to find that the Inspector General of Police is not here at the moment. Anyway, that is what happens in rural areas. The very persons who ought to check public nuisance commit nuisance regularly. This state of affairs should be put a stop to immediately. That could be done only by reducing the working hours from 9. p. m. to 6 p. m. In Bombay and its suburbs the Congress Government are doing all they can to stop the drink evil. Enormous

sums are spent for educating the masses and abstain them from drinking.

In Orissa the Prime Minister is prepared to lose one third of the revenue, *i. e.*, Rs. 9·8 lakhs. In Madras the Ministry is prepared to lose Rs. 42 lakhs. There is a great deal of opposition and yet the Premier of Madras is not prepared to give up the attempt. He wants to see that the whole Presidency is dry. Almost all Provincial Governments are prepared to lose heavily. If our Government also make a change in the working hours of these toddy shops it may result only in a loss of Rs 25 or 30 thousand. It is only a very moderate demand.

Another point that I wish to bring to the notice of the House is this. Government have made a change by R. O. C. No. 414 of 36 Development dated 27-3-1936 by which the working hours of toddy shop have been extended from 8. p. m. to 9 p. m. I do not know for what purpose it has been done so. Probably it may be to derive more revenue from the poor peasants and labourers. That is a very serious blot to the administration of the present Dewan. I do hope that in a few hours or days this system will be changed.

With regard to the Excise policy it has been very often pronounced that the avowed policy of Government is prohibition. But they are not for prohibition to any extent. They care for the excise revenue and not for the good of the people. On page 7, of the Administration Report of the Excise Department for the year 1112 it is stated :—"All the above measures have been tried in Travancore pursuant to the declared policy of the Government as set forth above; but experience gained from the working of the prohibition measures does not in fuse in me any hope for the ultimate fulfilment of the declared policy."

One cannot understand what is stated in these sentences. With these words, I move the resolution for the acceptance of this honourable House. I hope the Excise Commissioner will not oppose it.

MR. P. KUNJUKRISHNAN : I second it.

MR. M. P. JOSEPH : I oppose this motion. I am very glad that the honourable member has given me an opportunity to state and restate the policy of Government in this matter. The policy of Government in this matter all along has been the gradual attainment of prohibition and not prohibition all at once. It may be true that prohibition is being tried in some of the British Indian Provinces. But we have not reached that stage. Honourable members are probably aware that for the gradual attainment of prohibition Government have appointed a Committee in 1098 consisting of some of the official and non-official members of this House and they prepared a scheme to be put into operation. This scheme was tried for about 10 to 12 years and the experience gained so far has shown that it has not been a success. Mr. C. O. Madhavan, my predecessor says in his administration report for

[Mr. M. P. Joseph.]

1111, that the experiment has been a thorough failure. One of the measures discussed by the Committee was that the working hours of toddy shops should be reduced. Some time before 1098 the working hours were from 6 a. m. to 9 p. m. It was reduced to 8 p. m. Although there was reduction in the number of hours it was found that it had no effect on the drinking population. Several toddy and arrack shops had to be kept open even after 8 p. m. There were several requests from contractors and the public that toddy shops should be kept open after 8 p. m. The Excise Commissioner therefore thought that the experiment of shortening hours had no support from the drinking population. If licit liquor was not supplied they are sure to resort to illicit, bad stuff. That has been the effect where prohibition has been tried. My friend wants that the hours of sales should not be extended after 6 p. m. Most of the drinking population are labourers and what they drink mostly is toddy. Their daily activities will be over by about 6 or 7 p. m. Regular sale in toddy shops commences only after 6 or 7 p m. I have visited some of the biggest toddy shops in Alleppey and other places and I found that the sale really commences by about 6 or 7 and lasts till 9 p. m. Once you permit people to drink, you must give them a fair opportunity to drink at their leisure hours and not when they work. Either you must prevent them from drinking at all or if you permit it give them a fair opportunity to drink. Toddy is not so bad as my friend Mr. Narayanaperumal Nadar makes it to be. It is a food to the labourer. It is a food to the labourer as well as a stimulant. After a hard day's work in the hills or in the Kuttanad lakes I think nobody in this House will grudge the weak labourers having a cup of toddy.

MR. SIVATHANU PILLAI: Is the policy of Government temperance or prohibition ?

MR. M. P. JOSEPH: Prohibition by gradual stages. My friend Mr. Nadar has been telling us that by drinking the drinker very often commits public nuisance, that the Police Officers drink, and all that sort of thing. These are all exaggerations. I know Travancore and I have gone through most of the places and I know, as a matter of fact, that people in Travancore are sober and sober-minded. The drink evil is not so bad in Travancore as it is in other parts of India. Amongst Mussalmans there is a religious precept that they should not drink. The Hindu population are averse to drink Then as to the Christian population, I can assure the House that it has not become an evil among that Community. The resolution is a very short one, I find from the agenda that there is a bigger resolution about prohibition I would not therefore take up more of your time over this resolution now. When the other resolution is taken up for consideration I will deal with the question of prohibition at length. All that I say is that if we allow the labourers to drink we must allow them a fair opportunity. This can be afforded only after 6 or 7 p. m. I am therefore against the reduction of hours of sale. My friend has been telling us that Mr. C. O. Madhavan had recommended the extension of the period from 8 p. m. to 9 p. m. and he criticised the Government for

having accepted the recommendation. The criticism was not fair, as it was on the specific following recommendation of the Head of the Department, supported by facts that the Government chose to pass its orders.

"It has been found by practical experience that 8 p. m. is too early an hour to close the sales, since sales in most shops generally begin only after 6 p m. and since the people who resort to shops do so only after their daily activities are over. It is therefore desirable to change the hour to 9 p. m."

The Excise Committee which went into the question at length says as follows about the change of hours:

> "As a matter of fact regular sales especially in arrack shops hardly ever commence before evening. With regard to the closing hour, it was suggested that in towns the closing hour should be fixed at 7 p. m. The Excise Commissioner pointed out that it was in town that much difficulty was experienced in enforcing even the present time limit of 8 p. m. Conditions of life in a town were varied and many people usually were able to leave off work and get home not earlier than 8 or 8-30 p. m with the result that shop keepers when taxed with the breach of the rule complained of the pressure brought to bear upon them by many persons, who, from their local status and influence, it was not possible for the shopkeepers to disoblige without bringing upon themselves a good deal of trouble."

Although it was suggested to them that the working hours should be reduced the suggestion was not accepted. The matter was gone into by the Committee at great length and they were decidedly of opinion that the shops should be kept open till 8 p. m.

MR. R. SIVARAMAN NAIR: What is the scheme of Government in bringing about prohibition?

MR. M. P. JOSEPH: One of the measures adopted was the reduction in the number of shops. Then there was the experiment of local option. Then, there was the reduction in the issue strength of arrack. These measures were all tried and after years experience it was found that the measures attempted proved to be a thorough failure.

MR. R. SIVARAMAN NAIR: May I know whether there is any scheme at present?

MR. M. P. JOSEPH: At present there is no scheme.

MR. M. SIVATHANU PILLAI: May I know what the member means by 'thorough failure'. Were not Government able to prevent illicit sale of arrack?

MR. M. P. JOSEPH Government were not able to stop all illicit distillation and manufacture of arrack.

MR. P. KUNJUKRISHNAN: May I know whether the type of toddy kept in the arrack shop is good to the health?

MR. M. P. JOSEPH: Well, I may say this. I do not know the name of the Doctor but I have read in a Medical Journal that bulk for bulk toddy contains more vitamins than milk and that it is a food which is beneficial to labourers.

MR. P. KUNJUKRISHNAN: May I know whether this is the kind of toddy kept in the arrack shops?

MR. M. P. JOSEPH: Yes.

MR. P. SIVARAMA PILLAI; Is there no substitute for toddy?

MR. M. P. JOSEPH: My points are these. The Excise Committee considered this question at length and found it necessary to keep open the shops till 8 p. m. My predecessor Mr. C. O. Madhavan, with his several years of experience in this department, has stated that even 8 p. m. is too early an hour for closing the shops. Total and immediate prohibition is not, at present, the policy of Government.

MR. P. S. MAHOMED: വിളക്കുവെച്ചു മണിവരെ കുറക്കരുതൊ?

MR. M. P. JOSEPH: By experience it was found that it was not possible.

MR. KAINIKARA M. PADMANABHA PILLAI: May I know whether the honourable member has anything to suggest in the way of prohibition?

MR. M. P. JOSEPH: Nothing at all.

MR P. C. ADICHAN സർ, ഈ ഉപക്ഷേപത്തെ അനുകൂലിച്ചുകൊണ്ടു സംസാരിക്കണമെന്ന് ഞാൻ ആഗ്രഹിക്കുന്നു. ബഹുമാനപ്പെട്ട എക്സൈസ് കമ്മീഷണർ അവർകൾ കള്ള് നല്ലതാണെന്നു പറഞ്ഞപ്പോൾ ഇവിടെയിരിക്കുന്ന പലരും ചിരിക്കുന്നുവെങ്കിലും, സാധുക്കളായ കൂലിവേലക്കാരോടു കരുണയുള്ളവരുടെ ഹൃദയംതകരുകയാണ് ചെയ്യുന്നതു്. വൈകിട്ട് ൮ മണിക്ക് മദ്യഷാപ്പു അടയ്ക്കുകയെന്നുള്ളതു് ൯ മണിയാക്കുമ്പോൾ ദിനംപ്രതി കൂലിവേല ചെയ്യുന്നവർ അവർക്കു കിട്ടുന്ന തുച്ഛമായ കൂലി മദ്യഷാപ്പിൽകൊടുക്കാൻ സാധിക്കാതെ തങ്ങളുടെവീട്ടിലുള്ള കുഞ്ഞുകുട്ടികൾക്കുപയോഗയോഗ്യമാകത്തക്കവിധത്തിൽ വീട്ടിൽഎത്തിക്കുവാൻ സാധിക്കുന്നു. കൂടാതെ സാധാരണ കൂലിവേലക്കാരായ പാവങ്ങൾക്ക് കിട്ടുന്നതു ചീനിവെള്ളവും, പഴംകഞ്ഞിവെള്ളവും ചേർത്ത കള്ളാണ്. ഇതു രാത്രിയിൽ കിട്ടുന്നതുകൊണ്ടുതന്നെ വിശന്നുവരുന്ന അവർ തിരിച്ചറിയുവാൻ സാധിക്കാതെ കുടിച്ചുപോകുന്നു. ൯ മണിക്ക് അടച്ചുകഴിഞ്ഞാൽ ഇവരെ കബളിപ്പിച്ച് ചക്രം പിടിച്ചുപറിക്കാൻ ഷാപ്പുകാർക്ക് സാധിക്കയില്ല.

സാമ്പത്തികവശത്തുകൂടെനോക്കുന്നതായാൽ ഞാൻ ഉൾപ്പെട്ട കുറവർ സമുദായത്തിലെ അനവധി ഉദാഹരണങ്ങൾ അറിയുവാൻ സാധിക്കും. ഇന്നു കാണുന്ന നമ്മുടെ രാജ്യം ഈ വിസ്തീർണ്ണത്തിൽ ആക്കിത്തീർത്ത ശ്രീമാർത്താണ്ഡവർമ്മ മഹാരാജാവ് എട്ടുവീട്ടിൽപിള്ളമാരെ ഭയപ്പെട്ടു ഒളിച്ചു ഓടിപ്പോയവഴി കൊല്ലത്തുനിന്നും വടക്കോട്ടു വഞ്ചിവഴി

പോകയും വലിയ മഴ നിമിത്തം സഹിക്കവയ്യാത്ത തണുപ്പിനാൽ അടുത്തുള്ള കരയിൽ ഇറങ്ങുകയും കക്കാ നീററിക്കൊണ്ടിരുന്ന ഒരു കുറവൻ രാത്രിസമയം മുഴുവൻ തിരുമനസ്സിന് തീ കത്തിച്ചുകൊടുക്കുകയും അതിൽ സന്തോഷിച്ച് ൧൫൦ ഏക്കർ സ്ഥലം ആ കാവൽ വാരത്തു കരം ഒഴിവായി അദ്ദേഹം വാമൂഹനായ സമയം കൊടുക്കുകയും ചെയ്തതു് ബഹുമാനപ്പെട്ട എക്സൈസ് കമ്മീഷണർ നല്ലതാണെന്നു് മന്ദസ്മിതത്തോടു പറഞ്ഞ ആ "കള്ളു" കുടിച്ചതുമൂലം കടത്തിൽപെട്ടുപോയിയെന്നു ഓർക്കുമ്പോൾ ആരുടെ ഹൃദയം ആണു് തകരാത്തതു്.

അതുപോലെ തന്നെ കൊട്ടാരക്കര കച്ചേരിയും പള്ളിക്കൂടവും നില്ക്കുന്ന സ്ഥലം ഉൾപ്പെടെയുള്ള ൧൮ ഏക്കർ സ്ഥലവും ൧൨ പറ നിലവും ഒരു കുറവൻെറ വകയായിരുന്നതു് കള്ളുകുടിച്ചു നശിച്ചതാണെന്നു പറയുന്നതു് പച്ചപരമാർത്ഥമാണു്. പ്രസ്തുത താലൂക്കിൽതന്നെ തലച്ചിറയ്ക്കടുത്തു് പൊടിയാട്ടുവിള എന്ന സ്ഥലത്തു് ൧൨൦ പറ നിലത്തിൻെറ ഉടമസ്ഥനായ കുറവൻ ഇന്നു് തെണ്ടി നടക്കുന്നതും കള്ളുകുടികൊണ്ടല്ലേ? ജഗദീശ്വര! പാവങ്ങളുടെ വായിൽ മണ്ണിടുന്ന കള്ളുമൂലം കുറവർ സമുദായമെന്നല്ല മറ്റു സമുദായത്തേയും നശിപ്പിച്ചുവെന്നു ചുരുക്കത്തിൽ പറഞ്ഞാൽ അതിൽ കള്ളം ഒട്ടുംതന്നെ ഇല്ല. അതിനാൽ വൈകിട്ടു് ൬ മണിയെന്നുള്ളതു് ൩ മണിയാക്കുന്നതുമൂലം സാധുക്കളെ പലവിധത്തിൽ രക്ഷിക്കുന്നതിനുംപുറമെ വല്ലവരും നല്ല കള്ളെങ്കിലും കുടിക്കുവാൻ സഹായിക്കുമെന്നുള്ളതുകൊണ്ടു ഈ ഉപക്ഷേപത്തെ ഞാൻ ബലമായി പിൻതാങ്ങുന്നു.

MR. KUMARAN VAIDYAN. സർ, ഞാൻ ഈ പ്രമേയത്തെ അനുകൂലിക്കുന്നു. വൈകുന്നേരം ആറുമണിക്കു കള്ളുഷാപ്പുകൾ പൂട്ടണമെന്നുള്ള അഭിപ്രായക്കാരനാണു് ഞാൻ. കള്ളു കുടിക്കുന്നതു് നല്ലതാണെന്നു അഭിപ്രായമുള്ളവരായി തോന്നുന്നില്ല. നമ്മുടെ പുരാതനമായ ആയുർവേദശാസ്ത്രം നമ്മെ പഠിപ്പിക്കുന്നതിപ്രകാരമാണു്. അതായതു "മദ്യവിക്രയസന്ധാതാ ഭാനവാതാനി നാചരേൽ" എന്നാണു്.

അതുകൊണ്ടു് കള്ളുകുടി നല്ലതാണെന്നുള്ള അഭിപ്രായത്തെ ഞാൻ ഒരിക്കലും അനുകൂലിക്കുന്നില്ല. മദ്യവർജ്ജനംകൊണ്ടു് എൻെറ സമുദായത്തിനു വളരെ ദോഷമുണ്ടെങ്കിലും രാജ്യത്തിനു പൊതുവെ ഗുണമാണുള്ളതു്. അനേകലക്ഷം ജനങ്ങളുടെ സൽഗുണത്തിനുവേണ്ടി എൻെറ സമുദായത്തിലെ ഏതാനും വ്യക്തികൾക്കു ദോഷം വന്നാലും തരക്കേടില്ല. അതിനാൽ വൈകുന്നേരം ആറുമണിക്കുമേൽ കള്ളുഷാപ്പു് തുറന്നുവയ്ക്കാതിരിക്കണമെന്നാണു് എൻെറ അഭിപ്രായം.

MR. P. S. MUHAMED. സർ, ബഹുമാനപ്പെട്ട മെംബർ മി. നാരായണപ്പെരുമാൾനാടാർ അവതരിപ്പിച്ചിട്ടുള്ള പ്രമേയത്തിന്റെ തത്വത്തെ ഞാൻ അനുകൂലിക്കുന്നു. കള്ളുകുടി എത്രതന്നെ നല്ലതാണെന്ന് എക്സൈസ് കമ്മീഷണർ പറഞ്ഞാലും, ജനങ്ങളുടെ ക്ഷേമത്തെക്കുറിച്ചു ചിന്തിക്കാൻ കഴിഞ്ഞിട്ടുള്ള എല്ലാ ആളുകളും കള്ളുകുടി വർജ്ജ്യമാണെന്നുതന്നെ അഭിപ്രായപ്പെട്ടിട്ടുണ്ട്. ഇവിടത്തെ ജനപ്രതിനിധികളും ഗവണ്മെന്റു തന്നെയും മദ്യപാനംനിറുത്തേണ്ടതാണെന്നുള്ള അഭിപ്രായക്കാരാണെന്നാണ് ഞാൻ മനസ്സിലാക്കിയിട്ടുള്ളതു്. (മി. പൈനിക്കര പത്മനാഭപിള്ള ഹീയർ, ഹീയർ.) മദ്യപാനത്തിലുള്ള ജനങ്ങളുടെ അഭിരുചി കുറേശ്ശ കുറേശ്ശ കുറച്ചു അവരെ ഇതിൽനിന്നും മോചിപ്പിക്കുന്നതിനുള്ള മാർഗ്ഗങ്ങളെപ്പററി ഗവണ്മെന്റും ജനപ്രതിനിധികളും ഒരുപോലെ ആരാഞ്ഞുവരികയാണു ചെയ്യുന്നതു്. "പ്രൊഹിബിഷൻ" ഉടനടി നടപ്പിൽ വരുത്തിയില്ലെങ്കിലും ഏതാണ്ടു കുറെക്കാലംകൊണ്ടു അതിന്റെ ഫലം തിരുവിതാംകൂറിൽ വരത്തക്കവിധത്തിൽ, ജനങ്ങൾക്കു കുടിക്കുന്നതിനു ചില തടസ്സങ്ങൾ വരുത്തുക എന്നുള്ള നയം സ്വീകരിക്കേണ്ടതാണ്. അങ്ങനെ ഇതിനുമുമ്പു സ്വീകരിച്ചതുകൊണ്ടാണ് ഈ സഭയിൽ ഇതിനുമുമ്പ് "പ്രൊഹിബിഷ"നെ സംബന്ധിച്ചുള്ള പ്രമേയങ്ങളെല്ലാംപ്രസ്സ് ചെയ്യാതിരുന്നിട്ടുള്ളതു്. "പ്രൊഹിബിഷൻ" സാദ്ധ്യമല്ലാത്തതുകൊണ്ടു കള്ളുകുടിക്കുന്നതിനുള്ള സ്വാതന്ത്ര്യം കൊടുക്കണമെന്നാണ് എക്സൈസ് കമ്മീഷണർ പറയുന്നതു്. കള്ളുകുടിക്കുന്നതിനുള്ള സൗകര്യം കുറേശ്ശ കുറേശ്ശയായി കുറച്ചുകൊണ്ടു വന്നാൽ കാലക്രമത്തിൽ പ്രൊഹിബിഷൻ ഇവിടെ നടപ്പിൽ വരുത്താം. അല്ലാതെ കള്ളുകുടി കൂടുതലായി അനുവദിച്ചുകൊടുക്കണമെന്നുള്ള വാദത്തോടു യോജിക്കുന്നതിനു നിവൃത്തിയില്ല. അതിനാൽ കള്ളുകുടി കുറച്ചുകൊണ്ടുവരുന്നതിനായിട്ടുള്ള ഈ സമയനിർദ്ദേശത്തെ സ്വീകരിക്കണമെന്നും, ജനപ്രതിനിധികളും ഈ സംഗതിയിൽ ജനങ്ങളോടു് സഹകരിച്ചു പ്രവർത്തിക്കണമെന്നുമുള്ള അഭിപ്രായത്തോടുകൂടി ഞാൻ ഈ പ്രമേയത്തിന്റെ മൂലതത്വത്തോടു യോജിക്കുന്നു.

MR. K. R. NARAYANAN: സർ, മി. നാരായണപ്പെരുമാൾ നാടാരുടെ പ്രമേയത്തെ ഞാൻ പിൻതാങ്ങുന്നു. മദ്യവർജ്ജനകാര്യപരിപാടി ഗവണ്മെന്റിന്റെ ശ്രദ്ധയിൽ കൊണ്ടുവരുന്ന സന്ദർഭങ്ങളിൽ ഗവണ്മെൻറു പറഞ്ഞുകേൾക്കാറുള്ള എല്ലാ വാദങ്ങൾക്കും പുറമെ നമ്മുടെ ഗവണ്മെൻറ് മെമ്പർ എക്സൈസ് കമ്മീഷണർ പറഞ്ഞ തരത്തിൽകൂടി ഒരു വാദം കൊണ്ടുവന്നിരിക്കുന്നു. ഇതിന്റെ സാമ്പത്തികവശത്തെക്കു

റിച്ചോ, ഇങ്ങനെയുള്ള ഒരു പദ്ധതി അംഗീകരിക്കുന്നതിലുള്ള വൈഷമ്യങ്ങളെക്കുറിച്ചോ പറയുകയാണെങ്കിൽ പരിപൂർണ്ണമദ്യവർജ്ജനനയത്തിൻെറ ആവശ്യകത ഗവണ്മെൻറിന്നു ബോധ്യമാകും. മദ്യത്തിൻെറ ഗുണങ്ങളെക്കുറിച്ചും, തൻമൂലം വരുന്ന ആരോഗ്യപരമായ അഭിവൃദ്ധിയെക്കുറിച്ചും, പരമ്പരസിദ്ധമായ വൈദ്യശാസ്ത്രങ്ങളുടെ അസ്ഥിവാരത്തെ അടിച്ചുടച്ചും അനുഭവത്തേയും അനുമാനത്തേയും അതിലംഘിച്ചുകൊണ്ടും, എക്സൈസ് കമ്മീഷണർ പറഞ്ഞതു് പരിതാപകരമായ അദ്ദേഹത്തിൻെറ അന്ധതക്ക് മകുടോദാഹരണമാണ്.

മദ്യപാനം ചെയ്യാത്ത സമുദായങ്ങൾ ബ്രാഹ്മണസമുദായവും മുഹമ്മദീയസമുദായവും ആണ്. ഇവിടെ മദ്യപാനം ചെയ്യുന്നവർ കൃസ്ത്യാനികൾ, ഈഴവർ, നായന്മാർ മുതലായ സമുദായക്കാരാകുന്നു. ബ്രാഹ്മണനോ, കൃസ്ത്യനോ, ഈഴവനോ ആരാണ് ആരോഗ്യത്തിൽ മുന്നിട്ടുനില്ക്കുന്നതെന്ന് ഒരു വെല്ലുവിളിയോടുകൂടി എക്സൈസ് കമ്മീഷണർ ചോദിക്കുന്നു. ഒരു മുസ്ലിമിൻെറയൊ, ഒരു ബ്രാഹ്മണൻെറയൊ ആരോഗ്യം സാമാന്യമായി എടുത്തുപറഞ്ഞാൽ ഒരു കൃസ്ത്യാനിക്കൊ, ഈഴവനൊ ഇല്ല. ആരോഗ്യത്തെ വളരെ വളരെ അധഃപതിപ്പിക്കുന്ന മദ്യപാനം ആരോഗ്യകരമാണെന്നുള്ള ഒരു ദുഷ്പ്രചരണം നടത്താൻ സാധിക്കുമെന്നു തോന്നുന്നില്ല. ൧൧൨൦-ൽ മദ്യവർജ്ജനപ്രമേയം മി: മാധവവാര്യർ തിരുവിതാംകൂർ നിയമസഭയിൽ അവതരിപ്പിച്ച് വാദപ്രതിവാദം നടത്തിക്കൊണ്ടിരുന്നപ്പോൾ അന്നത്തെ എക്സൈസ് കമ്മീഷണർ തലകുലുക്കി സമ്മതിച്ചു, മദ്യപാനം ആരോഗ്യഹാനികരമാണെന്ന്. ൧൧൨൦-ൽ അതായതു് ൧൪ കൊല്ലം മുൻപു് ആരോഗ്യത്തിന് ഹാനികരമായിരുന്ന മദ്യം ൧൧൨൪-ൽ ആരോഗ്യകരമായതെങ്ങിനെ എന്ന് ഞാൻ ചോദിക്കുന്നു.

ഇനി ഗവൺമെൻറു് പാളിസി മദ്യവർജ്ജനമാണെന്നു പറയുന്നു

MR. T. C. KESAVA PILLAI : മെമ്പർക്ക് ഷാപ്പുകാൺട്രാക്ററുണ്ടോ?

MR. K. R. NARAYANAN : വാദമുഖത്തിനുവേണ്ടി എനിക്ക് ഷാപ്പുകാൺട്രാക്ററുണ്ടെന്നു് സമ്മതിച്ചാൽതന്നെയും അതുകൊണ്ട് എന്തു ദോഷമാണെന്നു മനസ്സിലാകുന്നില്ല. ഞാൻ എന്നോടു ചോദ്യംചോദിച്ച മെമ്പറെപ്പോലെ ഒരു കൺട്രാക്ററല്ല. കൺട്രാക്ററായിരിക്കാൻ ആഗ്രഹിക്കുന്നുമില്ല.

ഗവണ്മെൻറിൻെറ നയം മദ്യവർജ്ജനകാര്യപരിപാടി നടപ്പിലാക്കുകയാണെന്നു പറയുന്നതു പലപ്പോഴും ഞാൻ കേട്ടിട്ടുണ്ട്. എന്നാൽ എങ്ങിനെയാണു ഗവണ്മെൻറിൻെറ മദ്യവർജ്ജനകാര്യപരിപാടി നടപ്പിലാക്കുന്നതു് എന്നു ചോദിച്ചാൽ ഷാപ്പുകളുടെ എണ്ണം കുറച്ച് മദ്യപാനാസക്തി ജനങ്ങളിൽ കുറച്ച് മദ്യപാനം നിറുത്തുകയെന്നുള്ളതാണെന്നു പറഞ്ഞു. ൻന്ന-ൽ ഈ നയം ഗവണ്മെൻറു ചങ്ങനാശേരിയിൽ പ്രയോഗത്തിൽ കൊണ്ടുവരികയും ചെയ്തു. അന്നു ഭയങ്കരമായ രേഴിമതിയാണു ഗവണ്മെൻറ് ചെയ്തതു്. ൯൩ ൽ ൧൦൦ തെങ്ങു ചെത്താൻ കൊടുത്തിരുന്നതു് ൯൭-ൽ അതു് ൧൦൧ തെങ്ങു ആക്കി. ഷാപ്പുകളുടെ എണ്ണം കുറച്ച് വൃക്ഷങ്ങളുടെ എണ്ണം കൂട്ടി ഗവണ്മെൻറു് മദ്യവർജ്ജനപരിപാടി നടത്തുന്നു എന്നു പറഞ്ഞാൽ എന്താണ് അതിനർത്ഥം. ഒരു തെങ്ങിൽനിന്ന് ഒരു പറ കള്ളുകിട്ടുമെങ്കിൽ ൧൦൧ തെങ്ങിൽനിന്നും ൧൦൧ പറ കള്ളു കിട്ടുന്നു ഈ സ്ഥിതിയിൽ ഷാപ്പുകുറച്ചതുകൊണ്ടുള്ള പ്രയോജനം എന്താണെന്നു് ചോദിച്ചുകൊള്ളുന്നു.

ഇനി അതിൻെറ മറുവശംകൂടി നോക്കാം. ഇതു് തൊഴിലാളികളുടെ ഒരു ആഹാരപദാർത്ഥമാണ് എന്നാണ് എക്സൈസ്കമ്മീഷണർ പറഞ്ഞുകേട്ടതു്. ഇതിൻെറ സാമ്പത്തികവശത്തെപ്പററി ബഹുമാനപ്പെട്ട ഗവണ്മെൻറു പ്രത്യേകം ആലോചിക്കണം. ഏതൊരു തൊഴിലാളിയും കാലത്തുമുതൽ അന്തിവരെ വേലയെടുത്താൽ അവനു കിട്ടുന്നതു് അഞ്ചോ ആറോ ചക്രമാണ്. കള്ളുവേണമെങ്കിൽ— അതും നല്ല കള്ളു വേണമെങ്കിൽ— രണ്ടോ മൂന്നോ ചക്രം കള്ളുഷാപ്പിൽ കൊടുക്കണം. ൫ ചക്രം കൂലി കിട്ടുന്നവർ ൩ചക്രംകൊടുത്തു ഒരു വിഷദ്രവ്യം വാങ്ങിക്കുടിച്ചിട്ട് ശേഷിച്ച ൨ ചക്രവുംകൊണ്ടാണ് വീട്ടിൽ പോകുന്നതു്. ആ തൊഴിലാളി, അവൻെറ ഭാര്യ, രണ്ടുമൂന്നു കുഞ്ഞുങ്ങൾ ഇവരെല്ലാം ൨ ചക്രം കൊച്ചുകാശുകൊണ്ടു ജീവിക്കുകയെന്നുള്ളതു പരിതാപകരമായ ഒരവസ്ഥയാണ്. ഇതാണ് മദ്യപാനംകൊണ്ടു ഒരു തൊഴിലാളിക്കു വരുന്ന സാമ്പത്തികസ്ഥിതി.

മദ്യവർജ്ജനകാര്യപരിപാടി അംഗീകരിച്ചാൽ ഗവണ്മെൻറിനു വിഷമമുണ്ടെന്നു് എനിക്കു മനസിലാക്കുവാൻ കഴിയും. ൧൫ ലക്ഷം രൂപായാണ് കള്ളുഷാപ്പിനത്തിൽ നമ്മുടെ ഗവണ്മെൻറിൻെറ വരവ്. ൧൫ ലക്ഷം രൂപാ ഗവണ്മെൻറിനു വരവുണ്ടാകണമെങ്കിൽ ആളുകൾ എത്രലക്ഷം രൂപാ കള്ളുകുടിക്കുന്നതിനായി ചിലവാക്കുന്നു എന്നു നോക്കണം. ഷാപ്പുകൺട്രാക്റ്റർമാർ ഒരു ലാഭം എടുക്കുന്നു. ഷാപ്പുകൺട്രാക്ട

ന്മാരുടെ അടുക്കൽനിന്നും ആദായം എടുക്കുന്നതു് ആരാണെന്നു് നമുക്കറിയാം. ഇതെല്ലാം കഴിഞ്ഞു് ഗവണ്മെൻറിനു ൭൫ ലക്ഷം രൂപാ കിട്ടണമെങ്കിൽ ചുരുങ്ങിയപക്ഷം ഒരു ൪൦ ലക്ഷം രൂപായുടെ കള്ള് ചിലവായിരിക്കണം. മുക്കാൽ ലക്ഷത്തോളമുള്ള ബ്രാഹ്മണർ കള്ള് കുടിക്കുന്നില്ല ൪ ലക്ഷത്തോളംവരുന്ന മുഹമ്മദീയർ കള്ള് കുടിക്കുന്നില്ല നായന്മാരിൽ ഒരു ഗണ്യമായ വിഭാഗം കള്ളുകുടിക്കുന്നവരല്ല. ഈഴവരിൽ കുറേപ്പേർ കള്ളുകുടിക്കുന്നുണ്ടു്. മറ്റു ചില സമുദായത്തിലെ ചിലരും കള്ള് കുടിക്കുന്നുണ്ടു്. ഈ കള്ള് കുടിക്കുന്നവരാരാര്? എല്ലാ സമുദായത്തിലേയും ഏതാനും ചില വേലക്കാരാകുന്നു ൪൦ ലക്ഷം രൂപായുടെ കള്ള് കുടിക്കുന്നതു്. ഈ ൪൦ ലക്ഷം രൂപായുടെ ആദായം പെട്ടെന്നവെ നിറുത്തിയാൽ ഗവണ്മെൻറിന്നു് വിഷമമുണ്ടാകുമെന്നു് എനിക്കു മനസിലാക്കാൻ കഴിയും. മദ്യവർജ്ജനകാര്യപരിപാടിയാണു് ഗവണ്മെൻറിൻെറ നയമെന്നു് പറയുകയും അതിനു ആവശ്യമുള്ള സംഗതികൾ ചെയ്കയുംചെയ്തു ഒരു പ്രായോഗികപദ്ധതി കൊണ്ടുവന്നു എട്ടോ പത്തോ പതിനഞ്ചോ വേണമെങ്കിൽ ഇരുപത്തിയഞ്ചോ കൊല്ലംകൊണ്ടു് മദ്യവർജ്ജനം പരിപൂർണ്ണമായി സാധിക്കുമെന്നു് ഗവണ്മെൻറു പറവടി പറയേണ്ടതിനുപകരം വാഗ്ഭടനേക്കാൾ കടന്നകയ്യിൽ മദ്യത്തിൻെറ ഗുണങ്ങളെപ്പററി പറയുകയാണു് എക്സൈസ് കമ്മീഷണർ ചെയ്തതു്. അതു ഏതായാലും കുറെ സാഹസമായിപ്പോയി.

മദ്യവർജ്ജനപരിപാടി നടപ്പിൽ വരുത്തുന്നതുകൊണ്ടു ചില തൊഴിലാളികൾക്കു വിഷമമുണ്ടെന്നെനിക്കറിയാം. എങ്കിലും രാജ്യത്തിൻെറ രക്ഷയെ മുൻനിറുത്തി അതു നടപ്പിൽ വരുത്തേണ്ടതാണു്. ഇന്നത്തെ എക്സൈസ് കമ്മീഷണർ പല ഡിപ്പാർട്ടുമെൻറിലും ഇരുന്നിട്ടുള്ള ആളാണു്. തിരുവിതാംകൂറിലെ ക്രിമിനൽകേസുകൾ പലതിനും കാരണം കള്ളുകുടിയാണെന്നു കാണാം. എക്സൈസ് റവന്യൂ എവിടെയെല്ലാം കൂട്ടലുണ്ടോ അവിടെയെല്ലാം ക്രിമിനൽ കേസുകളും കൂടുതലുണ്ടു്.

ഇങ്ങനെ സാന്മാർഗ്ഗികമായും സാമ്പത്തികമായും ആരോഗ്യപരമായും രാജ്യത്തിനു ഉപദ്രവത്തെ ചെയ്തുകൊണ്ടിരിക്കുന്ന ഒരു കാര്യത്തെ അഡ്ജസ്റ്റു ചെയ്യാതെ ശരിയായ ഒരു പദ്ധതി അംഗീകരിച്ചു മദ്യവർജ്ജനം നടപ്പിൽവരുത്താനുള്ള ഒരു മഹാമനസ്കത കമ്മീഷണർക്കുണ്ടായിരുന്നാൽ കൊള്ളാമെന്നഭിപ്രായപ്പെട്ടുകൊണ്ടു് ഈ പ്രമേയത്തെ അനുകൂലിച്ചുകൊള്ളുന്നു.

MR. KAINIKARA M. PADMANABHA PILLAI: Sir, all that Mr. Nadar wants by means of this resolution is that the sale of liquor should be stopped at 6 P. M. instead of at 9 P. M. as at present. I should think it a blessing even if the department succeeded or atleast earnestly tried to succeed in stopping the sale of liquor even after 9 P. M. As one honourable member pointed out, although the rules prevent the sale of liquor after 9 P. M. it is very seldom that that rule is followed or even attempted to be enforced by the department. I do not think that the department has ever tried earnestly to stop it; in fact throughout the State liquor is being allowed to be sold all night long. It has always been the policy of the department to show all manner of indulgence to contractors and to give them every facility to escape from the rules. Therefore, my point is that even if the department would seriously and honestly try to enforce the present rules, it should be a great blessing to the country. Therefore, when Mr. Nadar was speaking on this resolution I was really thinking that the department would immediately accept it because whether the rule has it at 9 P. M. or 6 P. M. it is all the same to them since for the department these rules are not intended to be followed.

Now Sir, after hearing the Excise Commissioner's speech on this resolution I have come to the firm conclusion that we have to support the resolution. I am not prepared to grant that the government have honestly tried any prohibition compaign in Travancore. The department has been speaking of local option, reduction of the number of liquor shops and so on I can confidently say that none of these things was ever seriously tried. Local option was tried in Changanacherry. First of all toddy did not come under the scheme and was sold freely; the attempt was to prohibit the consumption of foreign liquor.

MR. M. P. JOSEPH: Arrack also.

MR. KAINIKARA M. PADMANABHA PILLAI: Yes. What about toddy? That is the one form of liquor used by the poor man in the country. As a matter of fact even if there be a provision enabling, or for that matter encouraging, all the rich men in the country to drink and ruin themselves, personally, I won't consider it so objectionable. We are most concerned with the poor man, the labourer getting daily 4 chs. or so, who ruins not only himself but also his family on account of this drink evil. Local option proved a failure because for one arrack shop that disappeared half a dozen toddy shops spring up in the locality. When some form of liquor is allowed to be sold, no scheme of prohibition can succeed. Further, in Changanacherry, as soon as the sale of foreign liquor and arrack was prohibited every soda shop automatically got itself converted into a liquor shop and the department failed miserably in effectively stopping the sale of foreign liquor or arrack in the Changanacherry town. In fact it was never attempted seriously or honestly.

The Excise Commissioner has told us about reducing the number of shops. I would have thanked him if only he had prevented the system of sub-shops. What is the meaning of reducing one shop and allowing

each shop to have five or six sub-shops. Now he says that they have made one or two attempts and failed and that they really do not know now what do. When Government honestly tell us that there is no suggestion to offer, no more scheme to try, the only course open to us is to accept Mr. Nadar's proposal and to try that, although we may not be quite sure that that would lead to practical success. Mr. Nadar's suggestion may be impracticable. But why not the Government come forward with some thing more practical? Government are not able to make any concrete suggestion as far as we can gather from the answer by the Government member. We are therefore forced to accept Mr. Nadar's proposal. In the circumstances I would request the Excise Commissioner to consent to the reduction of hours of sale and to take particular care to see that the rules are enforced; because unless rules are enforced there would be no purpose served in our enacting even the best of rules.

With these words I strongly support the resolution.

MR. T. C. KESAVA PILLAI: Sir, this is a very interesting resolution. This is not the first time that this subject comes before the legislature. Sir, I have always been supporting these resolutions for temperance and prohibition. On a previous occasion when a question of temperance came up before the old Legislative Council I supported the resolution. But at the same time I asked one of the members, who was present and who supported the resolution honestly to tell me whether his own action was consistant with the speech that he made in the Council. Sir, I have found that there is not much use in our making speeches here and carrying such resolutions. Conditions are not going to improve by that. We must be sincere and true to our words. There must be personal example also. Sir, my friend Mr. Adichen suggested that the toddy sold must be pure and my friend Mr. Narayanan wanted that greater quantity just enough for appeasing hunger or thurst of the individuals must be sold. Sir, that is our attitude in the matter. There is no doubt that the resolution and our speeches are couched in good language. There is no use in our blaming any individual or community. Are we true to our words? Let us first of all consider that. Let us first of all be pure. Let us advise our friends to refrain from drinking. There is no use in our theorising here. Without wasting our energy and time here let us do honest propaganda.

So far as the Government are concerned it is their duty to maintain their stability for which they require finances; it is equally their duty to see that the health of the citizens are not impaired. As non-official members it is our duty to organize village units, not political organizations, and do useful work in this harmless direction of appealing to the people not to drink.

With these words I resume my seat.

MR. M.P. JOSEPH. My friend Mr. Padmanabha Pillai was telling us that the Excise department never seriously attempted prohibition although they declared that the gradual attainment of prohibition is their policy. I would only read to the honourable member the report of my predecessor Mr. Madhavan. This is what he says :—

"All the above measures have been tried in Travancore pursuant to the declared policy of the Government as set forth above; but experience gained so far from the working of the prohibition measures does not infuse in me any hope for the ultimate fulfilment of the declared policy. For instance I shall take up the results of the working of one of the measures *i. e*, the reduction in the issue strength of arrack. The issue strength of arrack was 20° U. P. and 25° U. P. for a long time. It was reduced to 25° U. P. and 30° U. P. which again underwent further reduction to 30° U. P. and 35° U. P. with effect from 1106 and 1107 contract in which stage it stood in the year under report. Even since then the fall in the consumption of arrack was cataclysmic and beyond measure and endurance. Of course the setting in of the economic depression was responsible in a great measure for the steep decrease. But that is not the only cause. The supply of weak arrack had an important bearing on the drop in the consumption of illicit arrack. Habits and tastes long formed and handed down from generation to generation are most impervious to change. The craving for strong alcoholic beverages running in the veins of the drinking population of Travancore has certainly put up a desperate fight with the innovations introduced in furtherance of prohibition. The lie of the country and the abundance of meterials for the production of illicit arrack afford ample facilities and offer sufficient attractions for the growth of boot-legging. Hence there is nothing wrong in concluding that the weak issue strength has a large part to play in progressively lowering the consumption of licit arrack by its replacement by illicit arrack As long as the lower strength is unable to further the cause of prohibition, it has become necessary to consider in the interests of Government revenue and the morale of the people whether it should be maintained any longer. Government have been therefore obliged to take up the question of the issue strength of arrack for their serious consideration in regard to future contracts

Similarly the practice of periodical reduction in the number of shops has also been proved to be quite ineffectual in furthering the object prompting its introduction. In accordance with the proposals of the Excise Committee it has been the policy of this Government to make a reduction of 5 per cent in the existing number of shops at the commencement of every contract. But the people of the localities in which toddy shops are abolished have been complaining of such abolition and petitions have been received to open fresh shops in such places. Therefore the continuance of the above practice is a matter which should engage the serious attention of the Government. On the demand of the people of the municipal town of Changanacherry the prohibition of vent of arrack in the locality was introduced with effect from the biennium of 1104 and 1105 and the same has been continuing till the close of the year under report. One sad experience gained at the working of prohibition in the said area is the lamentable apathy of the people of the place in the detection of Abkari offences No tangible co-operation was received from the public by the officers of the department. Therefore, I have no hesitation to pronounce the experiment as a complete failure.

The above circumstances warrant an entire re-examination of the measures now followed by Government as factors contributing to the ultimate attainment of the declared policy of Government. The abkari policy of this Government need not be controlled by ineffectual cants as those elucidated above have proved to be."

This is the report of an officer who was the head of the deparment for more than 8 years. This is his experience. It cannot be said that the Excise department has not been earnestly putting these measures into effect; they have tried; but they failed. Prohibition was tried in some of the advanced countries in the West, Europe and America. America tried prohibits for 19 years and failed. Norway and Sweden tried and failed. No country in Europe, has prohibition now. In British India prohibition is being tried in a few districts. It is too early to say whether it is going to be a success or failure. I have seen reports that it is a failure. What I submit is that merely because there is prohibition in British India, that is no reason why we should adopt it here also. No doubt some crimes are committed by people while they are drunk. But that is not common. More murders are committed because of family disputes, personal hatred, jealousy and all the rest of it, than due to drink. It is a fact that there were murders committed in Meenachil and Todupuzha by drunken men. But that does not mean that all murders in Travancore are due to drink. As I said, several offences are committed due to causes other than drink.

My friend Mr Narayanan was telling us that drink is certainly an evil and that it undermines the health of the people. But I would read to you what I find in a British Medical Journal. The British Medical Association recently appointed a committee to ascertain the effect of drink on the health and longevity of human beings. This is the report.

"Nothing is more entertaining than a study of the statements made by our prohibitionist friends on the "appallingly harmful effects of alcohol on the human constitution." For example it is impressed upon us that the total abstainer has a far longer expectation of life than the drunkard or even the moderate drinker.

What are the facts? The British Medical Association appointed recently a committee to ascertain the average age of the different categories of drinkers and the conclusions drawn from 4,324 deaths divided into five categories, gave the following interesting averages attained by each :—

	Years.	Days.
Total abstainers	51	22
Habitual temperate drinkers	63	13
Careless drinkers	59	67
Free drinkers	57	59
Decidedly intemperate drinkers	51	23

PRESIDENT : They have come to the conclusion that the average age of the death of the moderate drinker is 58 or so while such age of death in the case of the total abstainer is 45 or so. Is it not? (*Laughter*)

MR. M. P. JOSEPH : (*Reads*)

MR. M. SIVATHANU PILLAI : What does the member read from? Is it from an advertisement?

MR. M. P. JOSEPH: No. Sir, from Times of India.

MR. M. SIVATHANU PILLAI: Is it not an advertisement for Scotch Whisky? (*Laughter*)

MR. M. P. JOSEPH: No. Sir. (*Reads*)

MR. S. CHATTANATHA KARAYALAR: May I know Sir, whether that is the theory accepted by the Government?

PRESIDENT: That is part of his argument.

MR. KAINIKARA M. PADMANABHA PILLAI: To which country do those statistics relate?

PRESIDENT: England.

MR. KAINIKARA M. PADMANABHA PILLAI: What are the statistics so far as India is concerned? That is what we want.

MR. C. JEBAMONY NADAR: Are there any statistics available with reference to toddy which is available in Travancore?

MR. M. P. JOSEPH: All that I submit is that it is not quite right to say that those who drink die early. What about English men and Scotch men? They live much longer than we in India. (*Laughter*)

I am glad Sir, that the resolution before the House does not go far and stops with the reduction of the number of hours of sale. But as I have already observed, that has been tried and found a hopeless failure.

MR. M. SIVATHANU PILLAI: In view of the statement in the departmental report by Mr. Madhavan that the scheme proved a failure because of want of co-operation from the public, may I put it to the present Excise Commissioner whether it would not be worth another trial especially in view of the assurance of co-operation of the representative of the people here.

MR. M. P. JOSEPH: Prohibition was tried in America for 19 years. It proved a failure.

MR. JEBAMONY NADAR: Was the scheme tried in South Travancore?

MR. M. P. JOSEPH: The reduction of the number of shops was tried everywhere in Travancore; in South Travancore also.

With these words I oppose the resolution.

The resolution was put to vote and carried.

MR. K. NARAYANAPERUMAL NADAR: Sir, I beg to move the following resolution:

> "This Assembly recommends that all Kuthagapattoms of tanks and tank beds in the area commanded by the Kodayar Project, should be cancelled forthwith".

Sir, this Kuthakapattom is a source of revenue to the Government. It may be justifiable in some years; it may not be justifiable in others. I am not concerned with that question now. It is now an admitted

fact that the Kodayar Reservoir is not able to irrigate all the lands which it has to serve, and it has been the policy of the Government in recent years to improve and maintain and repair irrigation tanks in South Travancore. During the last few years Government have provided each year Rs. 25,000 or Rs. 30,000 for this purpose; I congratulate the Government for that and I am grateful to them. Now, Sir, there are very many tanks out of the area irrigated by the Kodayar Project, which are subject to Kuthagapattom. If such Kuthagapattom is cancelled forthwith these tanks also would be available for irrigating lands coming under the Kodayar Project. For example, the "Perumal Kulam" in Neendakara (A) Pakuthy will be of immense benefit to ryots provided the Kuthagapattom is cancelled and the tank is restored. Another fact about these tank beds is that they can serve as excellent pastures for cattle. Moreover, they serve as grazing grounds for cattle. For these reasons I move this resolution.

MR. T. C. KESAVA PILLAI: Sir, I second the resolution moved by Mr. Narayanaperumal Nadar. In this connection I wish to place before Government the importance of tanks and tank beds not only in the area commanded by the Kodayar project but throughout Travancore. There are certain tanks near the sea side which the Engineers may say can be disposed of as they lie near the tail ends of channels. The mover of the resolution has brought to the notice of the Assembly the importance of such areas for rearing of cattle. Sir, the price per acre is nearly Rs. 2,000 and a major portion of the area is used for cocoanut cultivation as such it is difficult to have grazing grounds and as such these areas may also be preserved for grazing purposes. With these words I second the resolution.

MR. M. RAMACHANDRA RAO: Sir, it is true that about 4 years back tank beds especially in the area commanded by the Kodayar project were partly given on registration and partly on Kuthagapattom. But when Government found that the Kodayar Project was not fulfilling the purpose expected of it, they have been restricting the kuthagapattom and now Government have ruled that there should be no registry of tank beds and if in any case kuthagapattom should be given, it should be given only under Government sanction. Thus even a cent of land to be given on kuthagapattom has to be brought to the notice of Government and the present policy of Government is not to give the land either on registry or on kuthagapattom. Ever since I took charge of the Department, I have been turning down recommendations of my subordinates for kuthagapattom of tank beds. The question of restoration of tanks is being taken up by Government and we have a scheme by which about 25,000 rupees a year should be set apart year to year for the restoration of these tanks. I may point out to the House that by virtue of a condition in the lease of lands Government can terminate a lease at any time before the expiry of the period mentioned in it. So I assure the House that as we take up tanks for restoration the leases in respect of them will be terminated and work will be proceeded with. There is no use in stopping atonce all kuthagapattoms, After all there are not many kuthagapattoms.

MR. K. NARAYANAPERUMAL NADAR: May I know the total area given under kuthagapattom?

MR. M. RAMACHANDRA RAO: I am sure it is not more than 100 or 110 acres. On my assurance that Government have taken up the question of the restoration of tanks and that the kuthagapattoms will be terminated in respect of such tanks, in proper time I trust that Mr. Narayanaperumal Nadar will withdraw his resolution.

MR. K. NARAYANAPERUMAL NADAR: In view of the assurance given by the Land Revenue Commissioner I withdraw the resolution.

The resolution was, by leave of the House, withdrawn.

PRESIDENT: Mr. K. Narayanaperumal Nadar.

MR. K. NARAYANAPERUMAL NADAR; Sir, I do not move the following resolution.

"This Assembly recommends to Government to abolish all today, arrack, opium and ganja shops".

MR. K. NARAYANAPERUMAL NADAR: In regard to the resolution

"This Assembly recommends to Government to feed Muttom with pure drinking water, as early as possible".

Sir, I understand that Government are pleased to take the necessary steps for supplying water to Muttom. I therefore do not move the resolution.

PRESIDENT: Government have already arranged to start a fairly big scheme for the supply of water at Muttom and honourable members will have opportunity to deal with it later on.

The resolution was not moved.

PULIYOOR T. P. VELAYUDHAN PILLAI: Sir, I beg to move the following resolution:

"This Assembly recommends to Government that a separate Maramat Department be re established forthwith."

Sir, the Maramat Department was confining its activities mainly to the renovation and reconstruction of Sirkar Temples in the State. A senior experienced Hindu Executive Engineer used to be appointed in sole charge of this Department, till it was abolished as a separate entity and amalgamated with the Public Works Department on the 10th Chingom 1113. Sir, the fact that out of the total grant of Rs. 3,05,500 for Devaswom Maramat works in the year 1111 the actual expenditure incurred during the year for the purpose amounted to Rs. 2,93,360 is a sure index of the deep interest shown by the Department in the speedy execution of the works for which there was provision in the respective budgets from year to year. But Sir, as a result of the amalgamation more than 50 per cent of the grant is allowed to lapse during the end of the year as the Public Works Department are attending to the Devaswom Maramat works in addition to their other multifarious duties. The amalgamation of the Maramat Department, I am constrained to observe, was really a move in

the wrong direction and the evil results thereof are far-reaching. The change has been a matter of deep concern to the Hindu public of the State. Repeated representations have been made both from in and outside this House, urging upon the attention of Government the necessity for the early re-establishment of the Maramat Department. I know, as a matter of fact that several resolutions have been passed at public meetings praying for the re-establishment of the Maramat Department and no orders have yet been passed in the matter. From the answer given to my interpellation No. 102 by the Chief Engineer yesterday I was able to understand that about Rs. 16,770 was the saving as a result of the amalgamation during the year 1113. Sir, I know that this is not exactly the real state of affairs, because page 202 of the budget of the current year shows that another amount of Rs. 8,400 was also allotted for the salary of a supernumerary executive engineer due to the amalgamation of the Maramat Department. So, the saving effected as a result of the amalgamation of the Maramat Department with the Public Works Department is not at all substantial to justify the amalgamation. This unnecessary change has resulted in a step-motherly treatment being given by the P. W. D. to the works connected with Sirkar Devaswoms. Sir, the renovation and reconstruction works in the Sirkar temples require a great amount of religious belief and shastraic knowledge besides the ordinary engineering skill for their successful completion.

PRESIDENT: I take it Mr. Truscott that there is at present no officer who does not profess the Hindu faith who is allowed to go near the temples.

MR. G. B. E. TRUSCOTT: No, Sir. The whole of the Maramat staff that Mr. Velayudhan Pillai is speaking of are directly employed on the Maramat works and they are all Hindus.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: It is not quite right. In order to see that all the works for which there is budget provision are executed in the year there must be some person exclusively interested in the matter.

PRESIDENT: Presumably, the Devaswom Commissioner will be the person interested.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: But he is helpless. The estimates have to be prepared and the works have to be pushed through and for this there must be some person interested in the matter, other than the Devaswom Commissioner. Moreover, the supervision of the maramat works done in Hindu temples cannot be properly effectively made by the departmental head, many of the Division Officers and the Assistant Engineers according to the present arrangement.

MR. G. B. E. TRUSCOTT: May I know from the member the names of such Officers?

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Mr. I. C. Chacko and Mr. Thomas.

MR. G. B. E. TRUSCOTT: Mr. Thomas has nothing whatever to do with the Public Works Department.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: But that was not so till recently. The Departmental head, one executive engineer and many of the assistant engineers who have no right even to enter the temple premises which are generally enclosed by high walls cannot exercise effective supervision of the maramat works. So, my submission is that at present the supervision is most ineffective and inefficient and there is leakage and waste of funds. It is therefore high time for the Government and the Department to see that a separate Maramat Department is re-established. Hence I commend my resolution for the unanimous acceptance of the House.

MR. T. C. KESAVA PILLAI: In seconding the resolution so ably moved by Mr. Velayudhan Pillai I wish to say one or two words. I do not want to dilate on the conditions existing in the Maramat Department. I simply want to place before Government that there are certain impediments in the way of carrying out renovation and re-construction works in minor and petty temples and works of small character. So far as devaswom matters are concerned, I understand that there should first be a conference of the Chief Engineer and some other individuals which will have to pass the works and estimates. It is only afterwards that the works can be carried out. Such a procedure will lead to delay in the execution of the works which will be of an urgent nature and this will be another impediment in the hasty execution of such works.

My information is that major temples have been renovated but more minor temples in various parts of the contry lie hidden in the jungles. In certain instances, the identification of such temples is lost. So, it is highly necessary that a separate department should be maintained for the safety of these trust institutions.

During the last car festival at Suchindram, the axile of the car was broken and there was delay in replacing the same. The whole matter was with the P. W. D. The public had no voice. The Pidakacars would have rectified the mistake easily if it were with a Thachu Asari as in olden days. I am illustrating the position that if the axil had been built according to Thatchu Sastra and examined by the officers who are competent to do it, the delay could not have happened. My suggestion is that the funds of the Devaswom Department must be placed under a separate Maramat Engineer; Maramat works could then be efficiently looked after. With these words, I support the resolution.

MR. G. B. E. TRUSCOTT: Sir, Expenditure should not be taken as a criterion of good work and it should not be understood by the honourable Members of this House that the Marmath Department is not doing efficient work for it is doing so. Its responsibilities are great and varied. The strength of the Maramath establishment is the same as it was before the amalgamation with the P. W. Department The only difference is that there is no separate departmental head for it. Instead of one executive Engineer assisted by several Circle Officers under him for looking after the works in the whole State, there are 5 Division Officers and their sub division officers who supervise the work of the

Circle officers a remark was made by one honourable Member that the Cheif Engineer being a Christian cannot enter temples and supervise the works relating to it. That is perfectly true. But the Deputy Chief Engineer is a Hindu and he supervises the works. He has already done a considerable amount of inspections this year in regard to Maramath works.

The main point for consideration should be as to the manner in which the Maramath works are carried out. There is a Maramath Committee which scrutinices all estimates for works relating to Maramath Department. This committee includes the Devaswom Commissioner. Under the present arrangement Government gets better value for the money expended.

Yesterday Mr. Velayudhan Pillai asked me details of contingent charges incurred for the Maramath Departmental works. These charges are advised by the Financial Department. I do not know the full details but these would include electrical charges, maintenance charges, telephone charges etc. and the increase over the previous year is probably accounted for by the cost of transfer of the various offices and papers consequent with the amalgamation.

After the first year of amalgamation of the department with the Public Work department, the Division Officers were asked to give their suggestions for improvement. Their suggestions are being received and considered. Some of their suggestions have already been put into operation. I trust Mr. Velayudhan Pillai will realise how the present constitution of the Maramath Department is working. Under these circumstances, I will ask the mover to withdraw the resolution.

MR. N. NARAYANA KURUP: May I know who sanctions the estimate for the construction of Maramath works?

MR. G. B. E. TRUSCOTT: The Government.

MR. T. C. KESAVA PILLAI: May I know who is supervising to the renovation of minor temples?

MR. G. B. E. TRUSCOTT: The Division Officers and their assistants in charge of respective divisions.

MR. T. P. VELAYUDHAN PILLAI: Are the Assistant Engineers supervising Maramath works in their respective divisions?

MR. G. B. E. TRUSCOTT: Yes.

MR. T. P. VELAYUDHAN PILLAI: Then, may I know who is supervising that work in the Quilon Division?

MR. G. B. E. TRUSCOTT: The nearest Assistant Engineer who is eligible for supervising the Maramath work.

MR. T. P. VELAYUDHAN PILLAI: Has he any power to supervise the work in the capacity of the Assistant Engineer?

MR. G. B. E. TRUSCOTT: Yes. But the Deputy Chief Engineer generally inspects the whole work.

MR. T. P. VELAYUDHAN PILLAI: May I know whether amalgamation was effected in view to bring about savings?

MR. G. B. E. TRUSCOTT: Not only that. But also for the sake of executing maramath works with facility and expedition.

MR. T. C. KESAVA PILLAI: What is surplus that was got as a result of amalgamation ?

MR .G. B. E. TRUSCOTT: About Rs. 20,000.

MR. T. C. KESAVA PILLAI: May I know whether the surplus has been added on to the Devaswom Fund ?

MR. G. B. E. TRUSCOTT: No, but I have never known Government refuse consent to granting funds for Maramath works.

PRESIDENT: As this is a very important matter I think I might clear the position by a few observations. I want it to be distinctly understood that, although a saving has resulted from the amalgamation of the Maramath Department with the Public Works Department, such saving was not the main object of the Government in making the amalgamation. It was found that there was one Maramath Engineer who was in charge of repairs, renovation and constructions in regard to hundreds or rather thousands of religious endowments and temples throughout the State. It meant considerable travel and incidental travelling expenses, and also supervision which was in its nature sporadic and fragmentary; and Government felt that they were not getting the value for the money spent on the works. It is not, and will not be the Government's intention just as it is not the Government's intention to scrutinise Christian establishments through non-Christian agencies, to supervise one set of religious institutions by followers of another faith. It will be the object of this Government to see that no religious infractions follow from any secular arrangement in managing these institutions The amalgamation was undertaken for the following purposes. As things are, there are quite a number of of Hindu officers of all grades, in the department of Public Works, in various districts and localities. The P. W. D. have certain facilities for new constructions and repairs, and they can utilise those facilities with more economy, more expedition and more effectiveness, because their officials are on the spot. The question is whether we should have a separate officer or functionary working separately, or whether the present P. W. D. establishment could not be utilised for the purpose. Let it be clearly understood that the Devaswom Department Budget is separate and is not mixed up with the general Budget. Let it be equally and distinctly understood that the Maramath Department Budget is separate and is not mixed up, nor is it contemplated to mix it up, with the general Budget. Let it further be understood that there is no question of mixing up one fund with the other or utilising one fund for another purpose. Therefore, when it is realised that the Devaswom Budget is a fixed amount, when it is realised that the Maramath Department Budget is also fixed from time to time, when it is realised that there is a Maramath Committee, composed of the Secretary in charge of the Department of Public Works, the Deputy Chief Engineer and the Devaswom Commissioner (now it is composed

of Mr. Narayanan Unnithan, Mr. Sesha Aiyar and Mr. Sri Renganatha Sastri), it will be conceded that no difficulties need arise. The Devaswom Commissioner, as a result of his inspection as well as the report made to him by his assistants makes a list of temples and institutions which need repair. That is placed before the Committee. The Committee makes out a kind of programme and hands over that programme to the Hindu Officers of the P. W. D. Such supervision as is possible by Mr. Truscott or his assistants is exercised only in a professional capacity. They have neither the right nor the competence to say that a certain work shall not be done or done in a particular manner.

MR. T. P. VELAYUDHAN PILLAI: In view of the President's statement, I beg to withdraw the resolution.

The resolution was, by leave, withdrawn.

MR. S. NARAYANA PILLAI: Sir I beg to move the following resolution :—

> "This Assembly recommends to the Government that a Committee be immediately appointed to conduct an industrial and economic survey of the State with special reference to the question of unemployment with a view to concert measures to co-ordinate the industrial with the agricultural development of the State and to solve the pressing and urgent problem of unemployment."

PRESIDENT: May I interrupt the honourable member. In 1941 the decineal census will have to take place. If a census of this kind is started now it will involve a tremendous amount of money by way of expenditure. The Census Commissioner and his staff will collect tremendous amount of information and they are going to be asked by the All India Census Commissioner, and certainly the Travancore Census Commissioner will have that very same purpose in view as the honourable member has in mind that of the collection of all possible data for the purpose of making an industrial and economic survey of the State with special reference to this deplorable question of unemployment. Once those figures and statistics are collected, then a committee composed of officials and non-officials can go into the question. But to start a survey now will be to reduplicate the expenditure, which I am sure, the honourable member will not like to embark.

MR. S. NARAYANA PILLAI: My intention is to bring this to the notice of the Government sufficiently early so as to enable them to include this item also in the next census.

I beg leave of the House to withdraw the resolution.

The resolution, by leave, was withdrawn.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I beg to move the following resolution :—

> "This Assembly recommends to Government that adequate and deserving grant-in-aid be given to the recognised Sanskrit schools in the State under the management of private agencies."

It is highly necessary in a State like Travancore that Sanskrit education should be substantially encouraged by Government. More than

[Mr. Puliyoor T. P. Velayudhan Pillai.]

61·5 per cent. of the total population of the State are Hindus and many valuable books of the Hindus are written in Sanskrit. The religion of the majority is therefore closely wedded to the'use of Sanskrit. Sanskrit is the repositary of Hindu Culture. The keen interest for a separate university manifested by public opinion in Travancore was to a large extent due to the attachment of the people towards Malayalam and Sanskrit literature and Kerala Art and culture and the desire for the conservation, development and enrichment of their cultural and literary traditions. It is more than 50 years since a Sanskrit College was established in Trivandrum which consists of a college section and a high school section. Not a single Sanskrit schcol was established by the Government or the Department afterwards. This shows that the Government or the Department are not taking any interest in the matter of giving encouragement to Sanskrit. Sanskrit is the only language in which through which higher education is possible in Ayurveda, Astrology and Silpasastra and above all, the Hindu Philosophy. But valuable services are being rendered by private agencies in the State by opening Sanskrit schools in different parts of the State. I am constrained to observe that adequate grant-in-aid is not at all given to these private institutions and I am personally aware that such schools cannot be run in a satisfactory manner without deserving grant-in-aid being given to them by the Department. So I submit that it is highly necessary that more deserving grant-in-aid should be given by the Department to the Sanskrit schools under the managemeet of private agencies. With these words, I move the resolution for the acceptances of the House.

MR. T. T. KESAVAN SASTRI: സർ, ഞാൻ ഈ പ്രമേയത്തെ അനുകൂലിക്കുന്നു. തിരുവിതാംകൂർ നിവാസികൾ സംസ്കൃതവിദ്യാഭ്യാസത്തിൽ ഇന്നു അതീവ ശ്രദ്ധാലുക്കളാണു. സാധാരണജനങ്ങൾപോലും ഈ വിഷയത്തിൽ താല്പര്യം പ്രദർശിപ്പിക്കുന്നുണ്ടെന്നു പ്രകടിപ്പിക്കുന്നു. സംസ്കൃതവിദ്യാശാലകൾ നടത്താൻ കൂടുതൽ ആസക്തി പലരും പ്രകടിപ്പിക്കുന്നു. എന്നാൽ പ്രോത്സാഹനമില്ല. സംസ്കൃതവിദ്യാലയങ്ങൾക്കുകൂടി മററു വിദ്യാലയങ്ങളെപ്പോലെതന്നെ ഗ്രാൻറുകൊടുത്തു സഹായിക്കുന്ന വിഷയത്തിൽ ഗവൺമെൻറും ഡിപ്പാർട്ടുമെൻറു മേലധികാരികളും ദയവായി ശ്രദ്ധപതിപ്പിക്കേണ്ടതാകുന്നു. പല അവസരത്തിലും ഈ പ്രമേയത്തെപ്പററി ഈ നിയമസഭാമുഖേന വാദപ്രതിവാദങ്ങൾ നടന്നിട്ടുള്ളതാണ്. പൊതുജനങ്ങളുടെ താല്പര്യവും ശ്രദ്ധയും അറിഞ്ഞു സംസ്കൃതവിദ്യാഭ്യാസപ്രോത്സാഹനവിഷയത്തിലും ഗവൺമെൻറു ദയാപൂർവ്വം ശ്രദ്ധിക്കണമെന്നുള്ളതാണു എൻെറയും അഭ്യർത്ഥന. ഞാൻ ഈ പ്രമേയത്തെ അനുകൂലിച്ചുകൊള്ളുന്നു. ഗ്രാൻറും മററാനുകൂല്യവും നൽകി ഗവൺമെൻറു സദയം ചെയ്യുന്ന സഹായ്യം സംസ്കൃതവിദ്യാലയങ്ങളുടെ പുരോഗമനത്തിനു പ്രേരകമായിക്കാണ്മാൻ താല്പര്യപ്പെടുന്നു.

MR. A. GOPALA MENON: I am glad that this question has come up again in the form of a resolution before the House because it has given me an opportunity of stating categorically what has been done by the Government in the way of encouragement of Sanskrit in the country. It is quite easy to see that from the grants given by the Government to various institutions in the past. On an average Rs. 900 per month is given by way of grant-in-aid to Sanskrit schools. I do not think that the charge of not giving encouragement to Sanskrit education can be maintained. Sir, it has been stated that because a large percentage of population is composed of Hindus we owe a duty to Sanskrit culture. Certainly we do and that is why the propagation of Sanskrit culture is being encouraged by the Department of the University. As for the schools, I had the misfortune to visit some of them where the students know neither Malayalam nor Sanskrit. I doubt whether they deserve any help at all. A gentleman to whom I declined to give sanction for a Sanskrit school the other day, wrote inviting curses on me because I denied him a means of livelihood. His mission way certainly not mere propagation of Sanskrit curricula. I do not think Government are bound to provide employment to all people qualified in Sanskrit by allowing them to start schools which do not serve either education or culture. The Department employ these agencies for the purpose of Sanskrit education and it is doing its very best to maintain the level of efficiency in these schools. But only such as are serving a useful purpose can be given help. Just recently, two months ago, a school was granted aid after careful consideration. I may assure Mr. T. P. Velayudhan Pillai that there are other cases under consideration for further grants. In the light of these observations, I request Mr. T. P. Velayudhan Pillai to withdraw his resolution.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I beg leave of the House to withdraw the resolution.

The resolution, by leave, was withdrawn.

DISBURSEMENT OF GRANTS TO TEACHERS IN AIDED SCHOOLS.

MR. S. NARAYANA PILLAI: I beg to move the following resolution :—

> "This Assembly recommends to Government that grants to teachers in aided schools be paid direct to the teachers themselves by the departmental authorities.

It is a well-known fact that there is no class of people which deserves our sympathy more than the grant-in-aid teachers. It is also a well known fact that the grant-in-aid given by the Department is inclusive of the compensation that the managers get for conducting these schools. Even the small amount of grant is not usually given to the teachers, so that they have to depend upon the tender mercies of the management. I do not include all the managers in this category. There are managers and managers. But in the majority of cases I fear the managers seldom pay the full amount or a good portion of the

[Mr. S. Narayana Pillai.]

grant to the teachers, so that those who are engaged in the noble profession of educating our future citizens are seldom able to pull on without great hardship. I place this resolution for the acceptance of the House and request the Director to see that the grant is paid direct to the teachers by the department or devise some other scheme by which a substantial portion of that amount at least goes to them.

MR. P. SIVARAMA PILLAI: In supporting the motion, I wish to bring to the notice of the House that whatever amount is being paid to the managers of grant-in-aid schools not more than 50 per cent is given to the teachers, in some of the schools. It is true that Rs. 8 is the average amount that is paid to the Vernacular school teachers. This Assembly had passed a resolution that it should be raised to Rs. 8½. Some how or other that resolution has not been given effect to. I know several cases in which managers take an advance of Rs. 100 or Rs. 150 from the teachers when they are appointed. By the time this amount is cleared by way of grant they will be summarily dismissed. I am sure that many such cases will be pending before the Director of Public Instruction for enquiry and disposal. In several schools out of Rs. 8 given as grant Rs. 2 or Rs. 3 will be taken by the managers either as remuneration for appointment or for payment to other teachers.

MR. T. C. KESAVA PILLAI: May I know whether the member is aware of any such case?

MR. P. SIVARAMA PILLAI: Yes, I am.

MR. T. C. KESAVA PILLAI: Will the member inform the authorities concerned?

MR. P. SIVARAMA PILLAI: I shall consider.

So I request the Director of Public Instruction to consider the resolution in the light of these facts and devise a scheme by which the Department can directly pay the grant. If he devises any other agency between the Department and the teachers, I am afraid, these grants will not reach the poor teachers.

MR. A. GOPALA MENON: Sir, this is a very difficult problem. It has taxed the intelligence and capacity of my illustrious predecessors. It was in 1934 that this question was first brought forward through a resolution at a conference of the teachers of aided schools in Tiruvella. That question was referred to the Director of Public Instruction and it was discussed in the Advisory Board and the conclusion arrived at was that it was not a practical suggestion. I have myself been trying to find a way of giving the teachers direct payment of the grant that the Government allows. But there are very many difficulties in the way so much so that I am constrained to agree with my predecessors that this particular suggestion of paying direct from the Government treasuries the amount that has been allowed to different teachers under private management cannot be carried out. We have to devise some other method. The difficulties are many. The teachers are appointed by the management. They should be amenable to the control of the

management and they are also liable to be sent away by the management. The department has absolutely no control over them except when they are kicked out. Then the Director himself can know what a lot of trouble he has to bring the managers to see things in the way the Department looks at the matter. As soon as a question arises whether a person has been reasonably sent out or not, the manager brings forward some charge or other against him which are often unreasonable but which form the basis of long correspondence and delay. If the Director finds it necessary to reinstate him, a series of letters are written which take up more time, sometimes several months, before any solution is reached. Ultimately, the Director has to threaten the withdrawal of grant if the teacher is not reinstated. The manager then comes round and says that the teacher will be sent to some other school, which is tantamount to dismissal, because with his small salary he will not be able to go over to other places. Such difficulties the Department has to meet in order to enforce control over the managers in regard to these teachers. The proposition before us is to allow each teachers salary in the Primary school to be made payable directly. The difficulty is that we have no control over the teachers nor any direct contact with them. It is only recently that Government has insisted that the managers should get the order of appointment countersigned by the inspecting officer so that we may know whether the manager has actually appointed a particular teacher in an aided school. Hitherto we had no record to identify the various teachers.

As regards the payment question, the theory is that grant is paid to the manager. The payment is virtually due only to the management. We are not paying the teachers. We are contributing a certain proportion of the teachers' salary to reimburse the manager for the total loss he has suffered. In such a situation I do not know how you can go to the teacher and say "I shall pay you." The grant becomes payable only after the teachers have been paid by the management and their acquittance obtained. As a matter of fact, as Mr. Sivarama Pillai pointed out, many of us know that no payment is made for months and the teachers have not got anything of what they signed for and yet the theory is that they have received the amount for which they have signed in the acquittance roll. Thus looking from the point of view of the Director of Public Instruction, I can only turn round and say to the teachers "you have been paid" Many cases are pending, where really the teachers have not been paid, whereas they have signed the acquittance Register as though they have received payment. Therefore, the theory of the case precludes the possibility of the Department interfering at this stage of the matter.

Further, the question is if we make direct payment to the teacher, we must be responsible for the discipline and the control of the teachers employed by private agencies. In fact, the private school teachers are responsible to the managers for their proper work and control of the institution in which they work. We have nothing to do with these

[Mr. A Gopala Menon.]

teachers. If anything goes wrong with the Aided School we do not ask the teachers, but we question the managers. The managers are primarily responsible for the efficient working of the institution Therefore, our contract with the teachers is absolutely indirect and we cannot go forward and bring ourselves into direct contact with them. Further, for such a change, more powers than are now given to the Director are necessary. That requires amendment of the code and a very long and searching enquiry. It is a very big question. The Department is already aware of the many difficulties in the management of private institutions. As far as the powers of the Director of Public Instruction go everything is being done to mitigate the hardships experienced by the private school teachers. This question has also been engaging the attention of the Department and if not directly and immediately, I promise something will be done sooner or later in the way of making sure the payment of the promised salary to the aided school teachers. I therefore trust that the Honourable member will withdraw his resolution.

MR. S. NARAYANA PILLAI: Sir, I withdraw the resolution.

The question whether the Honourable member has the leave of the House to withdraw the motion was put and carried.

The motion, by leave of the House, was withdrawn.

(Resolutions 11 to 13 were not moved).

MR. T. C. KESAVA PILLAI: Sir, I move that.

"This Assembly recommends to the Government that 30 % of the Land Revenue of the State be budgeted yearly for irrigation work for the the next 20 years."

Sir, there is a clerical error in the resolution as it is printed. It ought to be 30 per cent instead of 20 per cent. as seen here. I do not think that there is any necessity to speak about the importance of irrigation facilities so far as an Agricultural country is concerned. I have stated that Travancore should be considered as occupying the third class in India so far as agricultural facilities are concerned. One who sees the mountainous nature of the country would be convinced that there is an infinite possibility to store water in the higher levels and distribute it to the plains in this country. My provision is for alloting thirty per cent of the Land Revenue. I have tabled another resolution wherein I wish to bring to the notice of this House the necessity of establishing Taluk Boards and District Boards. Power must be given to the Boards so that they may look after their own irrigational facilities. The Chief Engineer had himself inspected a place in connection with an irrigation scheme placed before Government. The total acreage comes to nearly one thousand six hundred acres. The sum total needed for the restoration of the tanks would be much more than what is required for this small scheme. So my submission is that we have got good mountains and plenty of rain fall in this country, and low lying grounds to plant. If water is diverted to such levels, I am sure the fallow lands will also easily be irrigated.

There were made many representations through this Assembly and the last about the shortage of water for irrigation purposes. Government's Irrigation policy have no continuity in doing any thing. They are always changing. As an agriculturist, it is simply my duty to impress upon Government the necessities of the Agriculturists. It must be remembered that the revenue that Government get in the shape of indirect taxation is the result of agricultural revenue. Our country does not produce many industrial products. Our products are mainly agricultural When there is no safety for the agriculturists, wherein lies safety for the Government machinery? So, it is the duty of the officials and the non-officials to concentrate their attention on this question. I would only expect a proposal from the non-official side to increase the budget. I do not want to deal with this matter because on very many occasions representations have been submitted to Government and the Government are also aware of the needs of the Agriculturists. Whatever amount you bring in the shape of a budget for irrigation work, that is not actually expended for the same purpose. This is considered as a secondary thing so for as the Engineers are concerned. There are certain difficulties experienced by P. W. D. officials in Getting lands from the Land Revenue Department. So that the alloted amount may be spent by the Engineering Department. My humble submission is that I would emphasize the necessity of establishing Village or Taluk Boards taking up irrigation works, because the P. W. D. machinery is ineffective. I do not attribute any bad point to our Chief Engineer. Sir, he had been on the hills to inspect an irrigational scheme. I saw then two or three drops of blood in the hands of Mr. Truscott. Iwas very glad to see those drops of blood in the hands of the Chief Engineer of Travancore, who took pains to see the spot himself and actually sacrifice for the sake of the agriculturists. I say that such Engineers will be rememberd by the Agriculturist population or even by Government. Because they are the champions of the cause for which they work. I do not want to impress further the necessity of such an increased allotment. The official members should consider this problem because their revenue is got out of the agricultural population. So, I place this resolution for your kind consideration.

MR. JEBAMONY NADAR: Sir, I second the resolution and in doing so I have little to say because the difficulties of the agriculturists are well known. I do not make any difference between north and south Travancore. In the one place there is too much water and in the other too little. Whatever that may be, so far as irrigation facilities are concerned. I must say that they are quite meagre every where. The fault lies more with the Engineering Department than with the Government. In the Budget we always find some amount being allotted but some how or other the Engineering Department is not inclined to spend that amount and carry out the work.

Hence if nothing is done, I should think the blame lies with the Engineering Department. If they would spend the amount that is allotted for a particular irrigation work in a particular year, some relief could be afforded to the agriculturists. That reminds me of the saying that doctors' faults lie below the ground whereas engineers' faults lie above the ground. The numerous silted up tanks exhibit the Engineer's faults. I attribute this sad state of affairs to the want of sympathy on the part of the present Chief Engineer.

Further, Sir, I do not see any purpose served in most of the present day investigations, conducted by the P. W. D. at a very heavy cost. We usually find that some of these investigations result in only, as an end for paying a large number of officers their salaries and also heavy T. A. Thus large sums of money are spent away without any advantage to the tax payer. When the report of the investigation goes to the Chief Engineer some clerk in the Chief Engineer's office finds out some unimportant or mathematical error some where and sends it back to the office of origin and thus the report travels to and fro.

MR. G. B. E. TRUSCOTT: Does the Honourable member stand by that statement?

MR. M. SIVATHANU PILLAI: On a point of order. Sir, can an official member show a wry face when putting a question? (*Laughter*).

MR. JEBAMONY NADAR: Yes. Sir, and I take it, that such action in the Chief Engineer's office is due to the fact that he, the Chief Engineer, is not inclined to execute the work. Sir, the engineering department must be sincere. They must have the willingness to help the agriculturists, whose suffering knows no bounds.

MR. NARAYANAPERUMAL NADAR: Is not the Honourable member aware that in some cases Government have actually asked the Chief Engineer to surrender amounts allotted for his department.

MR. JEBAMONY NADAR: I am not aware of that, Sir. (*Hear Hear*) But I believe, that even without such a demand from the Government, the present Chief Engineer may allow the budgeted amount to lapse. In the case of certain irrigation works year after year provision is being made in the budget but to no effect as the work is not taken up at all.

Coming to the resolution, Sir, it is a very modest demand that my friend the mover has made, namely, twenty per cent. of the land revenue being set apart for irrigation works. Personally, I would wish he had asked for something more. I have great pleasure in supporting the resolution.

MR. D. FRANCIS: ஸர், நான் இந்த பிரமேயத்தை பலமாய் அனுகூலிக்கிறேன். கோதையார் புராஜெக்ட் ஏற்பட்ட காலம் முதல் நாஞ்சிநாட்டில், பழைய நிலங்களுக்கும், புதிதாய் வெட்டித் திருத்தப்பட்ட நிலங்களுக்கும் யாதொரு விதமான நியாயமான சிலவுகள் செய்யாததினால் தண்ணீர் கட்டிவைக்க இடமில்லாமல் கிருஷிகர்களுக்கு ஏராளமான நஷ்டம் ஏற்பட்டிருக்கிறது. ஒவ்வொரு வருஷமும் ஏதாவது ஒரு தொகை, நிலங்களின் ஆவசியங்களுக்காக சிலவு செய்து குளங்கள் வெட்டி வைத்திருப்பாராகில் சென்ற ஐந்து வருஷங்களாக நேரிட்ட சரிவும், தரிசும் உண்டாயிருக்காது. ஆனரபிள் மெம்பர் Mr. டி. ஸி. கேசவபிள்ளை பிரப்போஸ் பண்ணி எழுதியனுப்பியிருக்கும் தீர்மானத்தின்படி இருபது வருஷங்களுக்கு நிலங்களிலிருந்து கிடைக்கிற கரம் முழுத்தொகையில் ஒவ்வொரு வருஷமும் இருபதில் ஒன்று வீதம் அடுத்த இருபது வருஷங்களுக்கு கிருஷிக்காகச் சிலவு செய்யவேண்டும் என்று கொண்டுவந்த தீர்மானத்தின்படி, பணத்தை சேகரப்படுத்தி ஒவ்வொரு குளங்களாக வெட்டினால் மாத்திரம் தென் திருவிதாங்கூர் கிருஷிகர்கள் தப்பிப் பிழைக்க முடியும்.

இதுவரை 20 வருஷங்களுக்கு மேலாகியும் புதுநிலங்களுக்குக் குளங்கள் ஒன்றுமில்லாமலிருந்து நிலங்களுக்கு வெள்ளம் பாய்ச்சுவதற்காக ஒரே ஒரு குளம் மாத்திரம் வெட்டும்படியாக இந்த வருஷம் தீர்மானித்து எஸ்டிமேட்டும் போயிருக்கிறது. ஆனால் தெங்கன்புதூர் பகுதியில் முதலாவதாக வெட்டப் போகிற அந்தக் குளமானது அடுத்த வருஷத்தில் நடைபெறும் என்று கிருஷிகர்கள் நம்பியிருக்கிறார்கள். அதுபோல நீண்டகரைப் பகுதியிலும் வடிவீஸ்வரம் பகுதியிலும், நாகர்கோவில் பகுதியிலும் பகுதிக்கு ஒன்று வீதமாவது சில புதுக்குளங்கள் புதுவல் நிலங்களின் இரட்சைக்காக வெட்டித்தணிக்கவேண்டும். இவ்வளவும் பிரஸ்தாபித்துக் கொண்டு இந்தத் தீர்மானத்தைப் பலமாய் அனுகூலிக்கிறேன்.

MR. THARIATHU KUNJITHOMMEN: സർ, ഞാൻ ഈ പ്രമേയത്തെ അനുകൂലിക്കുന്നു. നമ്മുടെ രാജ്യത്തെ പ്രധാന ആഹാരസാധനമായ നെല്ല് ഇവിടെ വേണ്ടുവോളം വിളയുന്നില്ലെന്നും വലിയ ഒരു തുക പ്രതിവൽസരം ഈ വിഷയത്തിൽ നമ്മുടെ നാട്ടിൽനിന്നും പുറത്തേക്കു പോയിക്കൊണ്ടിരിക്കുന്നു എന്നും ഉള്ളതു് പ്രത്യേകം ഗൗനിക്കേണ്ട ഒരു വിഷയമാണു്. പ്രത്യേകിച്ചും ഒരു മഹായുദ്ധമൊ മറ്റൊ പണ്ടത്തെപ്പോലെ വരികയാണെങ്കിൽ ഭക്ഷണസാധനങ്ങളുടെ ദൌർല്ലഭ്യംകൊണ്ടു് നാം കഷ്ടപ്പെടേണ്ടിവരും. എപ്പോഴാണു് ഈ യുദ്ധം പൊട്ടിപ്പുറപ്പെടുന്നതെന്നു് അമ്പരന്നു നോക്കിക്കൊണ്ടിരിക്കയാണു്. മുമ്പു് യുദ്ധകാലത്തു് ഏകദേശം ൪ രൂപയോളം ഒരു പറ നെല്ലിനു വിലയുണ്ടായിരുന്നു. എന്നാൽ അന്നു് നാം കയറ്റുമതി ചെയ്തുവരുന്ന കാർഷികോൽപ്പന്നങ്ങൾക്കും വിലയുണ്ടായിരുന്നു. അവയിൽനിന്നും കിട്ടുന്ന ആദായംകൊണ്ടുവേണം

[Mr. Tariatu Kunjitommen.]

നമ്മുടെ ഭക്ഷണസാധനങ്ങൾ വാങ്ങിക്കുവാൻ. അവയുടെ വില ഇപ്പോൾ ഇടിഞ്ഞിരിക്കുന്നു. അതുകൊണ്ട് ഇനിമേലാൽ പട്ടിണി കിടക്കുകയല്ലാതെ വമ്പിച്ചതുക കൊടുത്ത് ഭക്ഷണസാധനം വാങ്ങിക്കുവാൻ നമുക്കു സാധിക്കാതെ വരും. ഇതിലേക്ക് തക്കതായ പ്രതിവിധികൾ നാം കണ്ടുവയ്ക്കണം.

ഓരോ രാജ്യക്കാരും പഞ്ചവത്സരപദ്ധതി എന്നൊന്ന് നിർണ്ണയിച്ച് അവരുടെ രാജ്യത്തില്ലാത്തതായ സാധനങ്ങൾ ഉണ്ടാക്കുന്നതിനായി പല വിധത്തിൽ പരിശ്രമിച്ചുകൊണ്ടിരിക്കുന്നു എന്ന് പത്രങ്ങൾ വഴിയായി നാം അറിയുന്നു. മററു സാധനങ്ങളുടെ കാര്യം ഏതുവിധത്തിലായാലും ആഹാരസാധനങ്ങളുടെ ദൌർല്ലഭ്യത്തെയാണ് നാം പ്രത്യേകം പരിഗണിക്കേണ്ടത്. ആഹാരംകഴിച്ചു ജീവിച്ചിരുന്നിട്ടു വേണമല്ലോ മററു കാര്യങ്ങളിൽ പ്രവർത്തിക്കാൻ. അതുകൊണ്ട് ഇവിടത്തെ ഭക്ഷണസാധനങ്ങൾ വർദ്ധിപ്പിക്കുന്നതിന് പര്യാപ്തമായ ഈ പ്രമേയത്തെ അനുകൂലിക്കേണ്ടതു രാജ്യസ്നേഹികളായ എല്ലാവരുടേയും കടമയാകുന്നു.

ഭൂനികുതിയുടെ ൧൦ ശതമാനം ൧൦ കൊല്ലത്തേക്ക് കൃഷിസേചനത്തിനായി വിനിയോഗിക്കണമെന്നുള്ളതാണ് പ്രമേയം. അതു വിനിയോഗിക്കുന്ന കാര്യത്തിൽ ബുദ്ധിപൂർവ്വമായ ഏർപ്പാടുകൾ ഗവണ്മെൻറു ചെയ്താൽ രാജ്യത്തിൻെറ ഭാവി വളരെ ശ്രേയസ്കരമായിരിക്കും. മദ്ധ്യോത്തരതിരുവിതാംകൂറിൽ അനവധി ചാലുകൾ ഒഴികിപോകുന്നുണ്ടെങ്കിലും ജലദൌർല്ലഭ്യംകൊണ്ടു കൃഷിക്കു നിവൃത്തിയില്ലാതിരിക്കുന്നു. അതുപോലെതന്നെ അനേകം വെള്ളച്ചാട്ടങ്ങളുമുണ്ട്. അവയിൽനിന്നും തോടുവെട്ടിവിട്ടാൽ ഇരുകരകളിലുമുള്ള നിലങ്ങളെ സേചനംചെയ്യുന്നതിന് സൗകര്യമുണ്ടാകും. മദ്ധ്യോത്തരതിരുവിതാംകൂറിലുള്ള ആറുകളെ തോടുകൾ മുഖാന്തിരം യോജിപ്പിച്ചാൽ വളരെ ഭൂമികൾ നെൽകൃഷിക്കു ഉപയോഗപ്പെടുത്താം, നമ്മുടെ ആഹാരസാധനത്തിൻെറ ദൌർല്ലഭ്യം തീരെ ഇല്ലാതാക്കുകയും ചെയ്യാം.

ജലസേചനത്തിനായി വിനിയോഗിക്കുന്ന സംഖ്യ എല്ലാ താലൂക്കിനും ഉപയോഗപ്രദമാക്കണം. ആഹാരം കഴിച്ചവന് ഫലഹാരം കൊടുക്കുക എന്നു പറയുന്നതുപോലെ ഇറിഗേഷനായി ധാരാളമായി പണം വ്യയംചെയ്തിട്ടുള്ള താലൂക്കുകൾക്കുമാത്രം ഭൂനികുതിയുടെ ൧൦ ശതമാനം ൧൦ കൊല്ലത്തേക്ക് നീക്കിവക്കുന്നതു വളരെ സങ്കടമാണ്. ആവശ്യപ്പോലെ ആകാശത്തേക്കുപോകുന്ന ജലം വർഷരൂപേണ

ചില പ്രത്യേകപ്രദേശങ്ങളിൽ മാത്രം പതിച്ചാൽ മററു സ്ഥലങ്ങൾ വരണ്ടുപോകയേയുള്ളു. അതുപോലെ നികുതിരൂപേണ ഗവൺമെൻറ് സംഭരിക്കുന്ന പണം രാജ്യത്തിൻെറ എല്ലാഭാഗത്തെ ആവശ്യത്തിനുംവേണ്ടി വിനിയോഗിക്കുന്നില്ലെങ്കിൽ ചില പ്രദേശങ്ങളിലുള്ളവർ വളരെ കഷ്ടപ്പെടേണ്ടിവരും.

ഞാൻ പ്രധാനമായി രണ്ടു സംഗതികളാണ് ഗവൺമെൻറിൻെറ ശ്രദ്ധയിൽ കൊണ്ടുവരാറുള്ളത്. ഒന്ന് ഗവൺമെൻറിൻെറശ്രദ്ധ രാജ്യത്തിൻെറ എല്ലാഭാഗങ്ങളിലും പതിയണം. മറെറാന്ന് ഗവൺമെൻറിൻെറ ശ്രദ്ധ എല്ലാജനവിഭാഗങ്ങളിലും സമഭാവനയോടെ പതിയണം. ഏതെങ്കിലും പ്രദേശത്തിൻേറയൊ അല്ലെങ്കിൽ ഏതെങ്കിലും ജനവിഭാഗത്തിൻേറയോ നേക്ക് ഗവൺമെൻറിൻെറ ശ്രദ്ധ പതിയുന്നില്ലെന്നു കാണുമ്പോൾ അതിനെപ്പററി പറയുന്നത് ദേശീയബോധമോ, പ്രാദേശികബോധമോ, വർഗ്ഗീയബോധമോ ആണെന്നും ദോഷാരോപണം ചെയ്യുന്നുണ്ട്. രാജ്യത്തിൻെറ ഏതെങ്കിലും ഭാഗങ്ങളിലൊ, ജനങ്ങളിൽ ഏതെങ്കിലും ഒരു വിഭാഗത്തിലൊ ഗവൺമെൻറിൻെറ ശ്രദ്ധപതിയുന്നില്ലെങ്കിൽ അതു് ഗവൺമെൻറിൻെറ ദൃഷ്ടിയിൽ കൊണ്ടുവരേണ്ടതു് ഏതൊരു ജനപ്രതിനിധിയുടേയും കടമയാകുന്നു. ഈ സംഗതിയിൽ രാജ്യത്തിൻെറ പൊതുക്ഷേമത്തെമുൻനിറുത്തി പ്രവൃത്തിക്കേണ്ടതാണ്. അതിനാൽ മി: ടി. സി. കേശവപിള്ളയുടെ പ്രമേയത്തെ ഞാൻ ബലമായി പിൻതാങ്ങുന്നു.

MR. KUMARAN VAIYDIAN: സർ, ഞാൻ ഈ പ്രമേയത്തെ അനുകൂലിക്കുന്നു. വടക്കൻ തിരുവിതാംകൂറിൽ വെള്ളത്തിൻെറ ദൗർല്ലഭ്യം കൊണ്ടു യാതൊരു കൃഷിക്കും നിവൃത്തിയില്ലാതിരിക്കുന്നു. അതുകൊണ്ടു കൃഷിക്കു വേണ്ട ആനുകൂല്യങ്ങൾ ഗവൺമെൻറ് ഉത്തരതിരുവിതാംകൂറിലേക്കു ചെയ്തുകൊടുക്കണം. വർഷത്തിൻെറ കുറവുകൊണ്ടു കരിനിലങ്ങൾ മിക്കതും ഉപയോഗശൂന്യമായി നികന്നിരിക്കയാണ്. അതുപോലെതന്നെ പുഞ്ചകൃഷിയും തീർന്നിരിക്കയാണു. ഭൂനികുതിയിൽ ൨൦ ശതമാനം ഇറിഗേഷനായി നീക്കിവച്ച്, അതു എല്ലാ താലൂക്കുകളിലേക്കും ഉപയോഗപ്പെടുത്തണമെന്നുള്ളതാണ് എൻെറ വിനീതമായ അഭിപ്രായം. നമ്മുടെ രാജ്യം ഒരു കർഷകരാജ്യമാണ്. വടക്കൻ താലൂക്കുകളിൽ നാളികേരമാണ് പ്രധാനകൃഷി. അതിനു മഴയുടെ കുറവുകൊണ്ടു വളരെ നാശമുണ്ടു. അതിനു ജലസേചനം ചെയ്യാൻ സാധിക്കയില്ല, അതുകൊണ്ടു ഞാൻ അതിനെപ്പററി പറയുന്നില്ല മി: കുഞ്ഞിത്തൊ

[Mr. Kumaran Vaidiyan]

മ്മൻ അഭിപ്രായപ്പെട്ടതുപോലെ അരുവികളുള്ള സ്ഥലത്തുനിന്നും തോടു വെട്ടി വെള്ളംകൊണ്ടുപോയാൽ അനേകം ഏക്കർ തരിശുഭൂമികൾ നെൽകൃഷിക്കുപയോഗപ്പെടുത്താൻ സാധിക്കും. ഓരോ താലൂക്കിലുമുള്ള കൃഷിസംബന്ധമായ സ്ഥിതിഗതികളെ നേരിട്ട് അറിയുന്നതിന് ഒരു കമ്മററിയെ നിയമിച്ച് വേണ്ട പരിഹാരമാർഗ്ഗം ഉണ്ടാക്കിത്തരണമെന്നുള്ള അപേക്ഷയോടുകൂടി ഞാൻ ഈ പ്രമേയത്തെ പിൻതാങ്ങുന്നു.

MR. G. B. E. TRUSCOTT: Sir, I find the mover has amended his resolution and increased his demand from twenty per cent. to thirty per cent. Now, Sir, our land revenue is approximately Rs. 41 lakhs so that the honourable member wants Rs. 12·3 lakhs to be spent annually on irrigation works. For the current year, we have an allotment of Rs. 4·7 lakhs for irrigation made up of 3·50 lakhs for protective irrigation and 1·2 lakhs for reproductive irrigation works. In the past years, we have not been able to spend all the money allotted in the budget. There are various reasons for this.

Mr. Jebamony Nadar stated that the Department was wasting a lot of money on investigations. That is Mr. Jebamony Nadar's opinion who seems to wish the department to indulge in a sort of hit and miss policy of digging a pit and hoping for the best and in the best does not turn out to fill in the pit and dig somewhere else, so much for Mr. Jebamony Nadar's engineering. Investigations are necessary and for every important work we first conduct a preliminary investigation to get an idea of the probable cost of the scheme and its utility and if this is found unworkable or too expensive, the scheme is dropped ; but if there appears possibilities a detailed investigation is made and on that detailed investigation the estimates are prepared. These estimates are not, as stated by Mr. Jebamony Nadar, scrutinised by any clerk, but by the Head Draftsman of the Chief Engineer's Office and the Chief Engineer. No estimate leaves the Chief Engineer's Office that has not been so scrutinised.

MR. JEBAMONY NADAR: The honourable member is not audible to me, Sir.

DEPUTY PRESIDENT: Please speak up, Mr. Truscott.

MR. G. B. E. TRUSCOTT: Evidently the honourable member has not been listening.

In the past Sir, there has been some delay in the execution of irrigation works due to the Chief Engineer not having sufficient powers. After some correspondence with Government these powers have now been enhanced and I feel sure that this will greatly help in the expeditious execution of works.

There is also considerable delay in the acquisition of lands for irrigation works. This is unavoidable as the Revenue department

have considerable trouble in ascertaining the ownership of the land required. But this has now been partly overcome by a special staff from the Revenue department being detailed to work under the P. W. D. In regard to the restoration of tanks in South Travancore, Sir, a special fund has been sanctioned for the purchase back of tanks which have been registered in the past in the names of private holders. All this will make it clear to the House that Government are doing their best for irrigation works. Therefore the resolution is not necessary. The Government of Travancore have always looked very very kindly on everything that helps the ryots; only the ryots in the country do not always do their part properly. For instance, in minor irrigation works, the Department improves these works and hands them over in proper repair to the ryots concerned and then it is the ryots' duty to maintain the works in proper condition. Unfortunately they do not always realise their responsibilities in the matter and many works are allowed to fall into dis-repair causing a loss both to the ryots and the Government who have together contributed to their cost.

I hope with this explanation the mover of the resolution will be satisfied and will withdraw the resolution.

MR. M. SIVATHANU PILLAI: May I ask the Chief Engineer whether the Government have at any time asked him to surrender any amount back to the Government?

MR. G. B. E. TRUSCOTT: I do not remember having been asked by the Government to surrender any amount from the allotment for any irrigation work. I may perhaps add that so far as the minor irrigation fund is concerned, it does not permit of surrender in any event, and funds not expended during one year are automatically carried over to the next year.

MR. T. C. KESAVA PILLAI: Sir, I have moved this resolution not with the object of winning a victory over the Government. The real intention of the non-official side has been clearly laid before the official side. Considering the fact that this matter relates to a department under an honest and sincere officer like Mr. Truscott, certainly, a member like myself has to withdraw the resolution. Personally speaking, I have that responsibility in the matter. But speaking on behalf of my constituency, as an elected representative of the people of my constituency, I have to press the resolution.........

MR. M. SIVATHANU PILLAI: Does the member withdraw his resolution or does he press it?

MR. T. C. KESAVA PILLAI: I have the right to make a reply and I am doing it.

I am really sorry for the unsympathetic attitude of my brother members of North Travancore. Sir, I thought that irrigation was a question affecting the whole of Travancore. I may inform my friend Mr. Kunjithommen that we in South Travancore are always ready to go and settle down in North Travancore leaving it to the people of

[Mr. T. C. Kesava Pillai.]

North Travancore to come and take our place in South Travancore and settle down there; we would not even grudge paying them, their bus fare for coming to the South.

Sir, Government have declared it as their policy to give special treatment to unrepresented backward communities. In the same way, Sir, the people of South Travancore deserve special encouragement at the hands of Government. Considering the peculiar condition so far as irrigational grants are concerned such as the scanty rainfall they have been given such special treatment in the past also. After all, Sir, what is it that I am asking for by this resolution? I want merely an extra of thirty per cent. of the land revenue to be set apart for the irrigation works. I may make it clear that this 30 per cent. I want over and above the present provision made in the budget.

Sir, we have only fifteen minutes more. I have another resolution also which I do not think I will have time to move. I may therefore be permitted to add that the constitution of taluk and village boards has become an urgent necessity is not for any other purpose, at least to serve as a check against the vagaries of some of the officers of the P. W. D. Recently in one of the yelahs in my constituency in spite of the obstruction by the people there, the officer at the spot cut the bund open; now nearly 1500 acres of land are silted up with sand. The innocent ryots of the place did not really want the matter to be placed before the Government. But Sir, I thought I would be failing in my duty if I do not place before the House this very serious misconduct on the part of an officer of the Government. Such things can be remedied only by the establishment of taluk boards and village boards.

I know, Sir, that I have got the right to withdraw.

DEPUTY PRESIDENT: Are you withdrawing it or pressing it?

MR. T. C. KESAVA PILLAI: I do not withdraw it.

MR M. SIVATHANU PILLAI: On a point of order, Sir. Has a member of this House a dual capacity here, one as representative of the people and the other his personal capacity?

DEPUTY PRESIDENT; He is pressing his motion.

MR. G. B. E. TRUSCOTT: The honourable member now wants 30 per cent of the land revenue over and above the present allotment. The present allotment is a little over 10 per cent; so what the honourable member wants is an allotment of 40 per cent. I am afraid I cannot accept that proposal. So, I must oppose the resolution.

MR. KOTTALIL P. ABRAHAM: May I know from the honourable member what allotment was spent this year?

MR. G. B. E. TRUSCOTT: I cannot give the exact figure but the total allotment is Rs. 4·7 lakhs.

MR. JOSEPH VITHAYATHIL : On a point of order. The resolution, as it is tabled, does not provide for 30 per cent being set apart over and above the budgeted amount. But the honourable mover of the resolution is putting another interpretation. The House ought to know what interpretation they ought to give to the resolution before voting on it.

DEPUTY PRESIDENT : It is open to the honourable members to interpret it in any manner they choose. The resolution, as it is, will be put to vote.

MR. KAINIKARA M. PADMANABHA PILLAI : Is it 30 per cent in addition, as amended by the mover himself? That is a point which we have to know before we definitely vote.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : Before voting, should we not know the real scope of the resolution?

MR. KAINIKARA M. PADMANABHA PILLAI : He cannot amend it at the stage when it is to be put to the vote of the House.

The following resolution of Mr. T. C. Kesava Pillai was then put to the vote of the House and declared lost.

"This Assembly recommends to Government that 30 per cent. of the land revenue of the State be budgeted yearly for irrigation works for the next 20 years."

MR. T. C. KESAVA PILLAI : I demand a poll.

A poll was accordingly taken with the following results :

AYES.- 21.

1. Mr. Kottalil P. Abraham
2. „ P. C. Adichan
3. Sahib Bahadur V. Chandamiah
4. Mr. D. Francis
5. „ S. Govinda Pillai
6. „ C. Jebamony Nadar
7. „ Kannanthodath Janardanan Nair
8. „ M. G. Kesava Pillai
9. „ T. C. Kesava Pillai
10. „ K. P. Kochukora Tharakan
11. „ Thamarappallil Kochuthommen
12. Mr. Thariathu Kunjithommen
13. „ P Kunjuukrishnan
14. „ Varkala K. Madhavan
15. „ Sahib Bahadur M. K. Mackar Pillai
16. „ P. V. Mathai Chemparathy
17. „ N. Narayana Kurup
18. „ K. Narayanaperumal Nadar
19. „ K. R. Narayanan
20. „ M. Ramiah Pillai
21. „ M. Sivathanu Pillai

NOES.—11.

1. Mr. M. K. Nilacanta Aiyar
2. „ M. Govinda Pillai
3. „ P. G. Narayanan Unnithan
4. „ P. Parameswaran Pillai
5. „ C. Kumara Das
6. „ G. B. E. Truscott
7. Mr. Puthupally S. Krishna Pillai
8. „ M. Ramachandra Rao
9. „ A. Gopala Menon
10. „ M. P. Joseph
11. „ Kodiveettil C. Raman Kunju

NEUTRALS.—26.

1. Srimati K. Devaki Antharjanam
2. Mr. K. Dominic Joseph
3. „ E. E. Pandarathil
4. „ K. G. Govindan
5. „ M. L. Janardana Pillai
6. „ N. John Joseph
7. „ N. V. Joseph
8. „ Joseph Vithayathil
9. „ Menatheri N. Kesava Panickar
10. „ T. T. Kesavan Sastri
11. „ Kaviyoor K. K. Kochukunju
12. „ N. R. Krishnan
13. „ A. K. Kumaran Vaidyan
14. Mr. K. Kunju Panickar
15. Sahib Bahadur P. S. Muhamed
16. Mr. S Narayana Pillai
17. „ P. Narayana Pillai
18. „ R. Narayanan Nambootiri
19. Srimati T. Narayani Amma
20. Mr. Kainikkara M. Padmanabha Pillai
21. „ P. Sivarama Pillai
22. „ R. Sivaraman Nair
23. „ J. W. Tolson
24. „ Puliyoor T. P. Velayudhan Pillai
25. „ N. Velu Achari
26. „ G. Velu Pillai

The resolution was declared carried, 21 voting *for* 11 voting *against* and 26 remaining *neutral*.

MR. S. NARAYANA PILLAI: Sir, I beg to move the following resolution:

MR. K. P. KOCHUKORA THARAKAN: എന്റെ പേരിൽ ഒരു പ്രമേയം ഉണ്ടായിരുന്നു. ആദ്യംവിളിച്ചപ്പോൾ ഞാൻ വെളിക്കുപോയിരിക്കയായിരുന്നു. അതുകൊണ്ട് ആ പ്രമേയം അവതരിക്കാൻ എന്നെ അനുവദിക്കണം.

DEPUTY PRESIDENT: You were not in your seat and Mr. Narayana Pillai has been called upon to move the resolution standing in his name.

MR. S. NARAYANA PILLAI: Sir, I move the following resolution:

> "This Assembly recommends to the Government that a scheme for the prohibition of the vending and consumption of intoxicating drinks within a limited area with a view to bring under control the drink evil, be devised and put through immediately."

Sir, the honourable members of this House have expressed the opinion already on a previous resolution that the drink evil should be brought under control and that the hours of drinking should be curtailed. We are supported in this by the policy of the Congress Government in Bombay, Madras and other Provinces in introducing prohibition in those places. I trust that my resolution will commend itself to the members of this House.

(At this stage the President took the Chair.)

I am of opinion that the prohibition of the vending and consumption of intoxicating drinks should be tried within some specified area as an experiment. Such an experimental measure has been tried in

the adjoining British Indian Province of Madras and also in some other Provinces and some villages in Mysore and from the reports of the Prohibition officers it appears that the experiment is proving a success. If such an experiment is made within some specified area here in Travancore, I am sure that the measure would prove a success.

One of the arguments advanced against the introduction of prohibition is that it will entail loss of revenue. But the present resolution is very limited in scope and hence there need be no fear that it will seriously affect the revenues of the state. When total prohibition is introduced, then it will be time to think of measures to make up for the loss. I would suggest that when such time comes the measures taken by the Madras Government for making up the loss in this direction may be introduced here also or other suitable measures. I commend this resolution for the acceptance of the House.

MR. P. NARAYANA PILLAI: Sir, I second the resolution. It is the declared policy of Government to gradually stop the drink evil. But I am sorry to say that this policy is not actively being pursued now. There is reason to suspect that the Government will not do anything in this matter, especially in view of the speech made by the Excise Commissioner. He was doing propaganda to popularise the drinking of toddy in this country. He was rather expatiating upon the efficacy of drink both as a medicine and as a food. Anyhow, it is high time that the drinking habit should be controlled and it is desirable that prohibition should be tried at least within a limited area.

MR. M. SIVATHANU PILLAI: On a point of order. The principle underlying this resolution is exactly identical with that of Mr. Narayanaperumal Nadar that was voted upon in this House today.

PRESIDENT: Mr. Nadar's resolution was for the purpose of shortening the hours for drinking and the present resolution is for the purpose of trying prohibition within a limited area.

MR. P. SIVARAMA PILLAI: In supporting the resolution before the House, I may be permitted to offer a few remarks. I am not at all convinced by all that was said by the Excise Commissioner though he brought forward the authority of some medical council for his proposition that the longivity depends more upon drinking. I may be permitted to say that in Travancore toddy-drinking would not in the least contribute to the health of the people. Possibly some other drinks may contain some sort of vitamin but there may be more poison than vitamins in them.

PRESIDENT: What is the liquor which has very high authority behind it?

MR. PUTHUPALLY S. KRISHNA PILLAI: Sweet toddy.

MR. P. SIVARAMA PILLAI: Take tea for instance. To a few people like me tea will be more intoxicating and stimulating. We know tea is poisonous to a considerable extent and nobody is going to recommend tea. Sir, I congratulate the Government for having selected an Excise Commissioner who is such an excellent propagandist for toddy-drinking

[Mr. P. Sivarama Pillai.]

in Travancore. But may I request the Excise Commissioner to remember the days when he was a Judge at Kottayam. Let him analyse the criminal cases especially the sessions cases which were tried before him. This morning when I went through the list of questions and answers I found that there were more sessions cases in the Kottayam District Court than elsewhere and I am very sure that the Excise Commissioner will be one with me when I say that more toddy is drunk in Kottayam District than elsewhere. Unfortunately my constituency namely Minachil and Thodupuzha, is competing with other taluks in this respect. From an analysis of the judgments in the sessions cases in Kottayam District and the causes that have led to the murders there, I am rather forced to place certain obvious facts before this House. Out of 77 cases that were tried last year 47 ended in conviction. 40 were murders and most of these murders were the result of drinking much more than what is required. The Excise Commissioner would say that drinking temperately or moderately would be conducive to health. But I do not think that drunkards are of the opinion that 2 drams would be conducive to health and that half a dram more would be injurious. I think that such subtle differences are not made when people are drinking. If people are sensible, I do not think that they will go in for drinking. So, all these things would clearly show that drinking will affect the society both morally and physically. To the honourable member who questions that, I might only say—let him go to Salem where the experiment is carried on and let him study the situation there.

MR. G. B. E. TRUSCOTT: Is the honourable member speaking from his own personal experience?

MR. P. SIVARAMA PILLAI: Not from my personal experience but from the facts brought to my knowledge by my intimate personal friends who are in Salem now.

MR. G. B. E. TRUSCOTT: Does the honourable member suggest that I too should not get information in the same way?

MR. P SIVARAMA PILLAI: He may. Economically also I may say that drinking is an evil. When I was carrying on economic surveys in the labour districts of Sholapur and Bombay, as a student in certain universities in Northern India, I found that more than 25 per cent. of the income that the labourers earned by their work was spent on liquor. I think almost the same figure if not more will be arrived at in Travancore also.

PRESIDENT: I do not want to guillotine the honourable member. It is now 5 o'clock. The session is going to be prorogued. The honourable member, if he wishes may finish his remarks soon.

MR. P. SIVARAMA PILLAI: I want to say much more. But since the time is up, I shall conclude by saying that I support the resolution.

MR. M. P. JOSEPH: Sir, here again we are at prohibition. The scope of the resolution is however very limited. The honourable member wants to try the experiment of prohibition in certain local

areas. The very same experiment was recommended by the Excise Committee and was tried for a period of 8 years both at Changanacherry and at Attingal.

This is what Mr. C. O. Madhavan says, as regards to experiment—

"Time has arrived to take stock of the working of the local option within the municipal limits of Changanachery and to come to a conclusion as to whether the experiment should be continued or terminated.....................According to my considered judgment the experiment was a thorough failure."

In the Administration Report for 1112, the Excise Commissioner says "on the demand of the people of the municipal town of Changanachery, the prohibition of the vend of arrack in the locality was introduced with effect from the biennium of 1104 and 1105 and the same was continuing till the close of 1111. One sad experience gained at the working of prohibition in the said area is the lamentable apathy of the people of the place in the detection of abkari offences. No tangible co-operation was received from the public by the officers of the department. The trial at Changanachery was therefore discontinued as a failure. With a view however to make one more attempt in this direction with a change of place local option was introduced within the municipal limits of Attingal." After a year's experience the Excise Commissioner wrote to Government that the people of Attingal are not for temperance or prohibition and that they sorely need arrack.

At Changanachery it was tried for 7 years. The experiment proved to be a total failure. The Excise Commissioner therefore recommended to Government for the abolition of the preventive staff. Government accepted the recommendation. Again, another attempt of local option was made at Attingal to see whether it would be a success there. For about one year the experiment was pushed on vigorously. That also proved a failure. The Excise Commissioner therefore informed the Government the result of the experiment at Attingal and also recommended the discharge of the special preventive staff. Government accepted the recommendation. The text of the Government letter in this connection runs thus:

"With reference to the correspondence ending with your letter No. 17466/A. 6096 dated 23rd June 1937 re: the introduction of local option at Attingal, I have the honor to inform you that local option has been a ghastly failure in Madras and in a country full of cocoanut palm trees and possibilities of illicit distillation, as this, it is bound to be futile with the sole result of loss of revenue to Government."

The experiment conducted one after the other proved futile. Such being the case, I ask the honourable members whether it is worth while to try again the experiment which was honestly tried for a period of over 9 years. Even after the Excise Commissioner's recommendation as to the futility of the trial of local option in one place, the

[Mr. M. P. Joseph.]

Government wanted him to try it in another place, where also it proved a total failure. It is well-known that Travancore is one village from one end of the country to the other and with its peoples living in separate plots from end to end, it is not possible to define a local area.

This is a country where cocoanut palms grow in abundance. Facilities to produce toddy are numerous.

MR. M. SIVATHANU PILLAI: In view of the fact that there are populous villages in South Travancore, will it not be desirable to try the experiment in South Travancore?

MR. M. P. JOSEPH: There also the same trouble is sure to arise. In America, where the people are supposed to be thorough going the attempt proved a failure after 19 years of vigorous compaign in favour of prohibition. In our country too the trial has ended in failure. I do not think that another attempt at this experiment will yield beneficial results. Under these circumstances, I would request the House to consider whether another attempt should be made.

The motion was put and carried.

PRESIDENT: Under Section 10 (1) of the Reforms Regulation II of 1108, I prorogue this Session.

The House prorogued at 5-5 P. M.

A. GUNAMONY,

Secretary to the Sri Mulam Assembly.

Annexure I.

MINUTES OF THE MEETING OF THE STANDING FINANCE COMMITTEE HELD ON THE 4TH FEBRUARY 1939/22ND MAKARAM 1114.

The first meeting of the Standing Finance Committee of the Sri Chitra State Council and the Sri Mulam Assembly was held in the Dewan's room, Public Offices, at 12 Noon on Saturday, the 4th February 1939/22nd Makaram 1114.

The following members were present:—

1. M. K. Nilakanta Aiyar Esq., B. A., B. L., *Ag. Chief Secretary to Government*—Chairman.
2. A. Easwara Pillai Esq., B. A., B. L., *Member, Sri Chitra State Council.*
3. M. Sivathanu Pillai Esq., *Member Sri Mulam Assembly.*
4. M. Govinda Pillai Esq., B. A., *Financial Secretary to Government.*
5. P. Parameswaran Pillai Esq., B. A., B. L., *Ag. Secretary to Government.*

The non-official members complained about the delay in the receipt of two Finance Committee notes. The Chief Secretary explained the circumstances under which some inevitable delay was caused in sending the notes and also expressed his readiness to supply information on any point required by the members.

1. EXCISE.

The Committee first took up for consideration the proposal for the reorganisation of the statistics branch of the Excise Commissioner's office by abolishing the existing temporary staff of seven clerks and appointing the following temporary staff:—

For the collection of Import and Export Statistics.

One clerk on Rs. 75-5-100.
One clerk on Rs. 40-5-70.
Seven clerks on Rs. 25-3-40 each.
Four clerks on Rs. 20-1-25 each.

For the audit of Customs Revenue.

One clerk on Rs. 75-5-100.
One clerk on Rs. 40-5-70.
Two clerks on Rs. 25-3-40 each.

Mr. M. Sivathanu Pillai enquired whether the staff proposed could not be reduced and whether in view of the necessity and the importance of the work they could not be made permanent instead of being kept temporary. The Excise Commissioner who was present at the meeting and the Chief Secretary stated that the staff demanded was the irreducible minimum, that the scheme was proposed as temporary because it was to be tried as an experimental measure and that the actual requirements could be ascertained only after seeing its working for some months The Committee accepted the proposal and agreed to the provision of an additional sum of Rs. 1,345 in the budget for the remaining months of the year.

2. SALT.

The Committee agreed to the provision of a sum of Rs. 2,500 in the current year's budget as an additional grant for the construction of an office building and six guard posts for the Palkulam Salt Factory in the Agastisvaram taluk.

3. MEDICAL.

The proposal for an additional provision of Rs. 3,956 in the budget of the Medical Department for the Maintenance of the electrical installation in the Leper Colony, Noornad, was next taken up for consideration. The Surgeon-General was also present on the occasion. The non-official members wanted detailed information about the output of power in the electrical installation and the consumption per month. As it was not possible to furnish the details at the meeting, the non-official members disapproved the proposal. They also held the view that it was not a suitable item to be brought up as a supplementary demand in the middle of the year.

4. PORTS.

The Committee considered the proposal for the reconstruction of the kitchen and corridor attached to the Marine Bungalow at Alleppey and agreed to the provision of a sum of Rs. 1,360 for the purpose.

5. PUBLIC WORKS DEPARTMENT.

The Deputy Chief Engineer was present at the meeting. The Committee approved the proposal for the provision of a sum of Rs. 2,120 for certain additions and alterations to the Cantonment Bungalow at Trivandrum.

6. The proposal for the provision of an additional allotment of Rs. 2,17,910 in the P. W. D. budget of the current year for repairing the road between Alwaye and Munnar in connection with the introduction of the Transport scheme was also approved by the Committee.

7. CLAY REFINING FACTORY.

The Committee accepted the provision of a sum of Rs. 30,000 by way of additional funds for making payments for the works relating to the opening of the Clay Refining and Porcelain Factory at Kundara.

A list of the items of expenditure authorised by Government under Section 32 of the Legislative Reforms Regulation II of 1108 since the last session of the Legislature was circulated among the members of the Committee.

The business being finished, the Committee adjourned *sine die* at 1.20 P. M.

P. PARAMESVARAN PILLAI,
CONVENER,
Standing Finance Committee.

Trivandrum,
10th February, 1939.

Annexure II.

REPORT OF THE PUBLIC ACCOUNTS COMMITTEE ON THE ACCOUNTS OF 1112 M. E. (1936-37 A. D.)

1. The Committee on Public Accounts for the year 1112 M. E. constituted under Government order D. Dis. 352/37/Legis, dated 7-9-1937 held its sittings on 11th August 1938 and 31st August 1938.

2. The Audit Report and Appropriation Accounts for the year 1112 prepared by the Account officer was examined in detail.

Appropriation Accounts (voted.)

3. *Comparison of the actuals with grants.* A statement comparing the total grants voted by the Legislature with the total expenditure against those grants is given below:—

Particulars.	Expenditure charged to revenue including working expenses.	Capital expenditure and Investments on reproductive works	Loans and advances.	Total.
Amount originally voted	1,62,32,558	71,48,832	22,61,700	2,56,43,090
Supplementary grants voted	1,52,257	..	2,05,000	3,57,257
Additional grants sanctioned under Section 32 of Regulation II of 1108	2.47,138	..	..	2,47,138
Reappropriations	(—) 315	..	..	(—) 315
Surrenders	(—) 400	(—) 7,18,000	..	(—) 7,18,400
Final Aggregate grant	1,66,31,238	64,30,832	24,66,700	2,55,28,770
Final Aggregate expenditure	1,58,22,925	30,68,879	19,50,505	2,08,42,309
Savings	8,08,313	33,61,953	5,16,195	46,86,461

The savings amounted to Rs. 46·86 lakhs or 18·35 per cent. of the final aggregate grant and were larger than the savings for the preceding year as shown below:—

Year	Expenditure charged to revenue including working expenses.	Capital expenditure and investments on re-productive works.	Loans and advances	Total.
1111	11·38	7·06	11·56	30·00
1112	8·08	33·62	5·16	46·86

We noted that except under the heads Expenditure charged to Revenue and Investments on Reproductive works there had been a definite improvement in budget forecasting as compared with the previous year as the savings were smaller.

Under Capital expenditure and investments on reproductive works, however, it was not possible to frame with sufficient accuracy the budget, as the execution of the several works had to depend on extraneous circumstances, which were beyond the normal control of the departments concerned.

The main items under capital expenditure etc., under which the savings occurred are noted below with brief explanations for such savings.

		Savings.
Grant No. I.	Town Planning Scheme ...	Rs. 9·19 lakhs
" II.	The Council Chamber ...	Rs. 1·32 "
	Pallivasal Hydro Electric scheme.	Rs. 1·01 "
	Telephone Trunk line ...	Rs. 2·00 "
" No. III.	The Trivandrum Drainage scheme	Rs. 3·38 "
	The Willingdon Water Works ...	Rs. 3·37 "
	Water supply to the Municipal towns of Alleppey, Nagercoil and Shencottah ..	Rs. 11·26 "
" XXI.	Railways ...	Rs. ·74 of a lakh.

Under Town Planning Scheme the savings were due to the stopping of works during the year and the deferring of improvements to the Thampanur Valley. The expenditure on Council Chamber works amounted to R. ·68 of a lakh only against the grant of Rs. 2 lakhs. It was also not possible to fully carry out the original programme as regards the Pallivasal Hydro Electric Works due to the difficulties that arose in the construction of the Power House. The entire provision for the Telephone Trunk Line had to lapse as the negotiations with the Government of India were not completed during the year. Under Drainage Scheme, the savings were due mainly to the delay in laying of sewers and construction of stormwater channels in the Observatory Yellah and also to the delay in the receipt of some of the bills from firms involving very large amounts. It was also due to the fact that the staff which was sanctioned was entertained only according to actual requirements which mainly depended upon the progress of the work. Under Willingdon Water Works, certain items of work such as the laying of water mains in Beach area, the Cantonment and Pangode were not taken up during the year. Under water supply to Mofussil towns, the works were undertaken only towards the close of the year as agreements had to be entered into by Government with the Municipalities concerned.

4. *Re-appropriations.* During the year, a sum of Rs. 315 was reappropriated from the voted head 25 State Charities to the non-voted head 24 Devaswoms. We noted that this was admissible under the rules. There were no irregular re-appropriations during the year.

5. *New Service.* Under Rule 10 of the Public Accounts Committee Supplemental Rules, the Financial Secretary to Government had placed before the Committee a list of supplementary grants obtained by the Government for schemes of new expenditure treated as "New Services" for the opinion of the Committee whether they are "New Services" or not (Vide Annexure A). This list was approved by the Committee.

6. *Supplementary grants obtained unnecessarily.* The statement of supplementary grants obtained unnecessarily is given below. (Vide separate statement attached *)

We found that it was not possible for the departmental officers to guage the savings at the time the supplementary grants were applied for.

7. *Expenditure authorised under Section 32 of Regulation II of 1108.* The expenditure authorised under Section 32 of Regulation II of 1108, during 1112 amounted to Rs. 2,47,133 against Rs. 1,19,645 authorised during 1111. We noted that such authorisation was made only in extremely emergent circumstances, and that a list of the items of expenditure authorised under Section 32 during the period between two meetings of the Finance Committee had been placed before the Finance Committee at its next meeting for its opinion.

8. *Excess expenditure under voted grants.* The expenditure exceeded the final voted grant under the following heads:—(Vide separate sheet attached X)

We noted that there has been a definite and steady improvement both in the number of grants under which excess expenditure occurred and in the amount of excess expenditure, as will be clear from the following statement.

Year.	*No of grants under which excess occurred.*	*Amount of excess Rs. in lakhs.*
1110	7	1·49
1111	6	·53
1112	5	·21

The small excess expenditure of Rs. 379 only, under 3 Salt 4 Excise and 5 Customs was mainly under Excise Provincial staff due to the entertainment of additional staff for the Anjengo and Thangasseri Frontiers and the payment of leave allowance for which there was no provision in the budget. The small excess of Rs. 153 under 17 Jails was also due to payment of leave allowances to establishment. Under Anchal working expenses and Anchal capital account again, the excess was chiefly due to payment of leave allowances for which there was, no provision in the budget. Under 15 General Administration—Legislative Bodies – the excess expenditure was under general election charges. The excess expenditure under Stationery and Printing was under Government Press establishment charges due to the additional work in connection with the Birthday Celebrations, printing of Electoral Rolls, Gazette and the Land Revenue Manual and under printing of Malayalam Readers and copy books.

Miscellaneous Observations.

9. *Publication of Trade Statistics.* The necessity for the publication of the trade statistics for a month before the close of the succeeding month was discussed. We noted that a scheme relating to the same was under the consideration of Government. For further details vide para 12 of the proceedings.

10. *Government Sales Depot, Trivandrum.* The question of handing over the business of the Sales Depot, Trivandrum to a private agency like the Shastiabdapurthi Memorial Institute, on a grant-in-aid system was considered.

The Director of Industries who was present also helped us in the discussion. We agreed with the Director that such an institution may not sufficiently care to protect the interest of the poor artisans in the State. For further details vide para 13 of the proceedings.

11. *Industrial and commercial Museum at Alleppey.* The necessity for opening an industrial and commercial museum at Alleppey to be run by the Government, for the purpose of attracting tourists, was examined. For further details vide para 14 of the proceedings.

12. As in the previous year we append to our report the minutes of our proceedings which we consider should be treated as part of the report.

13. The non-official members of the Committee thanked the Chairman for the way in which the deliberations of the Committee were conducted.

PROCEEDINGS OF THE MEETING OF THE PUBLIC ACCOUNTS COMMITTEE, DATED THURSDAY, THE 11th AUGUST 1938.

Present —

1. Sachivottama Sir. C. P. Ramaswamy Aiyar, Dewan of Travancore (*Chairman*).
2. Mr. M. Govinda Pillai, (*Secretary to Government.*)
3. Mr. K. J. Cheriyan, (*Ag. Financial Secretary to Government.*)
4. Mr. Padiyara Joseph Kunju.
5. Mr. K. C. Karunakaran.
6. Mr. M. G. Mathew.

Witness —

Mr. K. George, *Land Revenue and Income Tax Commissioner.*

Messrs.

G B. E. Truscott, Chief Engineer.

K. P. Padmanabha Menon, Electrical Engineer to Government.

C. Kumara Das, Director of Industries.

K. R. Narayana Iyer, Director of Agriculture and Fisheries and

P. Raman Pillai, Conservator of Forests were also present.

1. The Committee met at 11·30 a. m. in the Dewan's Office in the Huzur Cutcherry.

2. The proceedings started with Mr. M. G. Mathew explaining the inconvenience caused by the delay in the receipt of the Audit Report and Appropriation Accounts. He drew the attention of the Committee to the desirability of postponing the meeting so that the non-official members might get time to peruse the report. He suggested that it would be desirable to send up a number of questions on the report, the answers to which could then be placed on the table when the Committee next met.

Mr. Padiyara Joseph Kunju also pointed out that because of the Council Session and the delay in getting the report he had hardly any time for examining the report. He also was for postponing the meeting to a subsequent date.

3. The President concurred with the opinion expressed by Messrs. M. G. Mathew and Padiyara Joseph Kunju and it was decided to postpone the meeting to a convenient date, so that it might be possible for the members to put in a series of questions. The questions and answers could then be placed on the table or given to the members to facilitate further discussion.

4. Mr. K. George drew the attention of the Committee to the fact that it was not incumbent on the Committee to finish its work before the 1st Chingom, if it was not possible to do so before that date.

5. The President then proposed that the Committee might meet to discuss the report in Chingom next year and the Committee therefore fixed the 15th and 16th of Chingom 1114 as the most convenient dates to hold the next meetings.

The meeting adjourned at 11·45 A. M

PROCEEDINGS OF THE MEETING OF THE PUBLIC ACCOUNTS COMMITTEE, DATED WEDNESDAY THE 31st AUGUST 1938.

Members Present—

Mr. C. O. Madhavan, Chief Secretary to Government, (Chairman.)
Mr. M. Govinda Pillai, Financial Secretary to Government.
Mr. R. Krishnaswamy Rao, Secretary to Government.
Mr. K. C. Karunakaran, Member, Sri Mulam Assembly.
Mr. Padiyara Joseph Kunju, Member, Sri Chitra State Council.
Mr. K. J. Cheriyan, Account Officer was also present

6. The Committee met at 8·30 A. M. in the Dewan's Office in the Huzur Cutcherry.

The Chief Secretary to Government who had been nominated as President took the Chair.

7. The answers to the questions sent by Mr. K. C. Karunakaran were placed on the table *vide* appendix B.

8. *Savings in the voted grant under Public Works.*

(*Question* 1 *part* (*b*) *Annexure B.*)

Mr. Karunakaran referred to the large savings amounting to Rs. 11·16 lakhs in the voted grant under Public Works and desired to know the reasons therefor especially in view of the circumstance that the Department had obtained supplementary grants during the year both by a vote of the Legislature and under Section 32 of Regulation II of 1108. He further asked whether such savings could not have been utilised for urgent needs such as construction and repair of bridges, culverts and roads for which the Government had been pleading want of funds.

The Financial Secretary stated that excluding the grants relating to "Capital expenditure, Town Planning Scheme" for which the actual requirements could not have been foreseen and the grant of Rs. 1 lakh for the purchase of the bridge, etc , belonging to Messrs. K. D. H. P. Co. which had not been utilised, the savings amounted only to Rs. 75,000, and that even this sum was not under any one single item but under several items.

The Chief Secretary stated that the supplementary grants sanctioned were for specific purposes for which funds could not be provided by reappropriation from the grants already sanctioned and that the savings which resulted were not out of such supplementary grants.

9. *Expenditure authorised under Section 32 of Regulation II of 1108.*

Mr. K. C. Karunakaran suggested that Section 32 of the Regulation should not have been availed of except in emergent cases and that in cases where it had been availed of, the facts should have been placed before the Finance Committee

Mr. R. Krishnaswamy Rao stated that a statement showing the amounts sanctioned under Section 32 was being furnished to the Finance Committee.

10. *Industrial Loans.* Mr. Karunakaran wanted to know whether any loans granted for industrial purposes were written off and whether industrial loans were really given for industrial purposes.

The member was referred to paragraph 55 at page 183 of the Audit Report and Appropriation Accounts under discussion and was informed that the loans were granted on the recommendation of the Director of Industries and that they were written off as a result of the orders of Government on the report of the Director.

Mr. Joseph Kunju asked whether the outstandings under the loans were written off only after all possible attempts at recovering them had proved futile The Financial Secretary answered in the affirmative. In regard to the amount due from the State Aided Bank that had been written off, Mr. Joseph Kunju was referred to page 8 of the Audit Report and Appropriation Accounts under discussion.

11. *Savings under Medical Public Health and Sanitation (Question 1, Part 1, Appendix B.)*—Mr. Karunakaran referred to the explanation given by the Account Officer on page 116 of the Appropriation accounts under discussion for the large savings in the sanctioned grant for the purchase of European medicines which runs as follows:
"(—) Rs. 69,120 under contingencies—Purchase of European Medicines and Surgical Instruments—due to the non-receipt of the medicines, etc. ordered for 1112 during the year." He stated that there was a general complaint that during the year 1112 the supply of medicines to the hospitals was not sufficient and that the savings would not have been possible if the supply had been properly made. The Financial Secretary explained that the orders for medicines placed during 1112 were for supplies during 1113 and not for 1112 M. E. It was expected that the medicines, would arrive in 1112 itself and payments made during that year. He suggested that the last line above quoted "ordered for 1112 during the year" should be read as "ordered in 1112 for use during 1113 M E."

12. *Trade Statistics.*—(Q 2 Appendix B). Mr. K. C. Karunakaran stated that while going through the Appropriation Accounts for 1108 the Government had given an undertaking that they would make arrangements for furnishing the trading classes with trade statistics each month before the 25th of the succeeding month. Although a long time had passed and additional hands had been appointed for statistical purposes, the statistics were not being published in time. He stated that the Ceylon Customs Returns till the end of June were published in July and that the statistics relating to the Maritime States of Kathiawar and Travancore to the end of April were published by the Government of India before the 20th of May. There was, therefore, no justification for continuing the additional hands if the trading classes could not get the monthly statistics before the last week of every succeeding month.

The Chief Secretary referred to the deputation of Mr. D. Krishna Aiyar to Karachi and other places and said that the latter's report was being considered by Government.

Mr. Karunakaran remarked that the additional hands who were working at the Alleppey Customs House and furnishing the Chambers of Commerce with figures relating to trade and who have been transferred to the Commissioner's Office in Trivandrum might be retransferred to Alleppey so that the Chambers of Commerce might get at least the particulars they were formerly getting.

The Chief Secretary replied that the additional hands working in the various Chowkies were transferred to the Head Office on the suggestion of the member himself and that it was better before making any charge to await the orders of Government on Mr. Krishna Aiyar's report.

Mr. Karunakaran again stressed the difficulties in obtaining statistics and the useless way in which they were made available.

Regarding the valuation adopted in preparing the trade statistics, Mr. Karunakaran stated that the factories were not consulted and that the value mentioned by the Shipping clerk was always far from the real value and suggested that a certified statement as to the value of the shipment should be called for from the shipper.

Asked whether that would not cause additional delay and give room for complaint from the shippers, Mr. Karunakaran stated that they were already supplying such information to others and so there would be no difficulty in the matter.

13. *Government Sales Depot, Trivandrum.*—Witness: Mr. C. Kumara Das, Director of Industries.

Mr. K. C. Karunakaran referred to the commission of 10 per cent. charged on goods belonging to private individuals and stated that because of this high rate of commission there was no inducement for the manufacturers to send their goods to the Sales Depot as they could not stand the commission. Further the goods in the depot had to lie at the risk of the manufacturer. Mr. Karunakaran also drew the attention of the committee to the undertaking by Government that only 5 per cent. would be charged on mats and matting and 5 to 15 per cent. on other goods. The Director of Industries who was present stated that the proposal to reduce the commission would be gone into.

Regarding the enquiries made at the Sales Depot for the goods sold and how many of such enquiries were passed on to the manufacturers, the Director of Industries stated the names of a few constituents to whom the enquiries had been passed and who as a result, had obtained business.

On being informed that the monthly expenditure of the Sales Depot was Rs. 160 and that the income by way of commission was Rs.65 Mr. Karunakaran remarked that there was no justification for maintaining the Sales Depot at Trivandrum. Again, Trivandrum being a tourists' place and not a commercial one, it would be better to have

advertisements in prominent places by means of posters. He also suggested that Government might co-operate with the Shastiabdapurthi Memorial Institute in pushing forward the sales of commercial and industrial goods by making a grant of Rs. 1000 a year to the Institute instead of continuing the present Sales Depot.

The Director of Industries pointed out that there were administrative difficulties in the way and stated that the scope of the Sale Depot might be improved when more funds became available.

Asked whether the policy of Government was not merely to take initiative in such matters and then hand over the business to private individuals or institutions, the Director stated that such a principle was applied only to big undertakings. He also pointed out that the Depot had really done useful service by effecting sales to the value of Rs. 15,000 during 1112 and further by helping poor artisans who could not own a shop for themselves. As for co-operating with the Shastiabdapurthi Memorial Institute he stated that a private agency like the Institute could not be expected to take ample care of the poor artisans as there were instances of people whose exhibits had been refused by the Institute.

Mr. Karunakaran said that if the statements made by the Director of Industries regarding the Shastiabdapurthi Institute were correct he would agree with the Director of Industries in continuing the Government Sales Depot.

14. *Industrial and Commercial Museum at Alleppey.*

(Question III, Part (j) Appendix B.)

Mr. Karunakaran emphasised the growing importance of Alleppey as a commercial and industrial centre and referred to the conveniences available for tourists to land at the Alleppey pier. He suggested that in order to give some attraction to the tourists, an industrial and commercial museum should be established at Alleppey. It should be on a larger scale than either the Trivandrum Sales Depot or the Shastiabdapurthi Institute, and primary and manufactured products should be available there in large quantities.

Mr. Kumara Das referred to the proposal for opening such a museum by the Chambers of Commerce on receipt of a grant from Government and said that the Government ordered that the matter might lie over. Mr. Karunakaran agreed with the Director that the proposal of the Chambers of Commerce was not a desirable one and stated that the institution should be solely run by Government.

Mr. Karunakaran expressed thanks on behalf of the non-officials to the Chairman for the way in which the deliberations of the Committee were conducted.

The Committee closed its sittings at 10 A. M.

ANNEXURE A.

Finance Department.

Under Regulation 10 of the Public Accounts Committee Supplemental Rules, I beg to place before the Public Accounts Committee the following list of supplementary grants obtained by the Government during the year 1112 for schemes of new expenditure treated as "new services" for the opinion of the committee whether they are "new services" or not.

Grant. No.	Name of Major head.	Particulars.	Amount.
1.	30 Buildings, Communications etc.	For the acquisition of lands for the construction of a customs house at the Neendakara Port ..	4,980
XVIII.	21 Agriculture and Fisheries.	For the purchase of chemicals and appliances, books and periodicals and for giving wages to coolies etc., in connection with the scheme for the investigation of the root disease of cocoanut palm in South India. ...	3,500

Trivandrum,
11th August 1938.

Sd./ K. J. CHERIYAN,
Financial Secretary to Government.

ANNEXURE B.

MR. K. C. KARUNAKARAN.

Question (1) Explanation regarding savings:

(a) under medical, public health and sanitation.

(b) buildings, communications, etc.

Answer.

(a) The information required by the member is contained on pages 116 and 118-120 of the Audit Report and Appropriation Accounts for 1112.

(b) The information required by the member is contained on pages 70-72 of the Audit Report and Appropriation Accounts for 1112.

Question (2) *Trade Statistics.* In the report of the Public Accounts Committee on the Audit and Appropriation Accounts of 1108 M. E. on pages 10 and 11, the question of early publication of Trade Statistics was discussed. Then the Committee resolved that the statistics for each month should be compiled at least by the 25th of the succeeding month and published in the Gazette. The Chief Secretary also stated that the establishment of a separate statistical section in the Secretariat was engaging the serious attention of Government.

Now 4 years have elapsed and so far nothing has been done to implement the resolution of the Committee or the assurance given by the Chief Secretary.

Answer.

Mr. D. Krishna Iyer of the Excise Commissioner's Office who was deputed by Government to undergo training in statistics at Karachi returned a few months back. A report on the compilation and publication of Trade Statistics is under the consideration of Government.

Question (3) *Government Sales Depot, Trivandrum.*

(a) What are the present rates of commission charged on various classes of goods sold?

(b) How many enquiries have been received during 1112 M. E. and the nature of such enquiries?

(c) How many of those enquiries resulted in business?

(d) Please furnish a statement showing in detail the orders received, the orders executed, the value of the orders and the class and quantity of goods in respect of the orders.

(e) How many orders were passed on to the various constituents of the Sales Depot, and the nature of such orders and the quantity and the value of the orders executed?

(f) What is the cost of the maintenance of the Sales Depot, in Trivandrum, showing, the rent of the building, and the monthly total expenditure for running the Depot under separate headings?

(g) Are goods exhibited in the Shastiabdapurthi Memorial Institute and are goods sold through that Institute and are orders canvassed through the Institute?

(*h*) Has any suggestion been made to Government, or have Government themselves considered the desirability of merging the Sales Depot with the show room in the Shastiabdapurthi Memorial Institute?

(*i*) If Government are giving any grant or financial aid to the Shastiabdapurthi Memorial Institute :—

(i) what is the amount of grant or other financial aid?

(ii) do the Shastiabdapurthi Memorial Institute charge any commission on goods exhibited and sold.

(*j*) In view of the Industrial and commercial importance of Alleppey and in view of commercial travellers and other tourists visiting the town, have the Government considered the desirability of establishing an industrial and commercial museum with a commercial Bureau attached to it at Alleppey.

Answer.

(*a*) Commission is charged not according to the classes of goods sold. A commission of 6¼ per cent is charged on all articles sold belonging to the Government institutions and 10 per cent on those belonging to private individuals or institutions.

(*b*) to (*e*). The Sales Depot is not primarily like an agency which may canvass orders and execute them. It collects and exhibits articles for advertisement and sale. The articles consist mostly of products from cottage industries. Enquiries are made by people who visit the Depot about the manufacturers if they desire to deal with the latter directly for future larger orders and for articles which may not happen to be in the Depot during their visit. These customers are given the necessary advice and in some instances, the suppliers have told us of buyers who have come to know them through the Sales Depot. Nearly 50 per cent of our customers are tourists from outside the State and a good number of them take the addresses of producers of many of the products exhibited. It cannot be stated, however, what proportion of such enquiries does actually avail themselves of the advice given them regarding the articles they seek to purchase. The number of such enquiries is very large.

Enquiries are also received from outside and they are put into touch with the producers. About 40 such enquiries were received in 112 and it is reported that ¾ of the number resulted in business. Orders are also received from Government Departments and they are being executed.

Enquiries were chiefly in regard to the supply of furniture, silver chukrams work, kuftgari work, ivory articles, cocoanut shell carvings, carvings on horn and wood, caskets, jewellery, silk, carpets, towels and sarees, photos of H. H. the Maharaja, Government Publications like the Travancore Almanac, Photos of Travancore scenery, yarn, honey, etc., etc.

The sales effected in the Depot amounted to over Rs. 16,000. No figures are available in regard to the business effected directly between suppliers and those who were directed to them.

(*f*) The monthly expenditure for running the Depot is as ollows :—

		Rs.	Chs.	C.
Establishment	...	82	0	0
Rent	...	50	25	0
Other contingencies	...	26	15	0
Total	...	159	12	0

(or Rs. 160 per mensem).

(*g*) Goods were exhibited in the S. M. S. M. Institute from the Sales Depot and it was found the sales there were very poor. No orders have so far been canvassed through the Institute.

(*h*) No.

(*i*) (i) The Government are not giving any grant or financial assistance to this Institute.

(ii) The Institute charges a commission of 5 per cent on the sale proceeds of goods exhibited,

(*j*) Yes. The proposal is under consideration.

Separate statement attached*

No. of Grant.	Name of Grant.	Original grant	Supplementary and additional grant voted.	Addl. grant sanctioned under Sec. 32 of Reg. II of 1108.	Diversions and Surrenders.	Final grant.	Actual expenditure.	Savings as compared with Original Grant.
		Rs.	Rs.	Rs.		Rs.	Rs.	Rs.
I.	(a) 30. Buildings, Communications and Miscellaneous Public Improvements excluding Electrification of and Water Supply to Government buildings .	23,96,826	66,860	1,58,244	..	6,21,930	25,55,072	..
	(b) 31 Protective Irrigation .	2,64,300	..	..	..	2,64,300	2,66,470	...
	(c) 35. Irrigation Capital Account .	4,060	..	...	..	4,060	3,668	...
	(d) XXV Productive Irrigation - working Expenses .	45,890	..	..	..	45,890	45,644	...
	(e) Capital expenditure—Town planning Schemes .	10,00,000	...	..	..	10,00,000	81,196	...
	(f) Do. The Council Chamber .	2,00,000	.		..	2,00,000	67,936	...
	Total of Grant No. 1.	39.11,076	66,860	1,58,244	..	41,36,180	30,19,980	11,16,194
IV.	20. Education .	48,31,112	45,000	2,844	..	48.78,956	47,32,116	1,46,840
V.	1. Land Revenue .	9,40,944	..	10,000	..	9.50.944	9 38,477	12,467
VIII.	16. Administration of Justice .	10,76,241	...	22,812	..	10,99,053	10,45,239	53,814
IX.	18. Police .	7,48,422	405	600	..	7,49,427	7,31,597	17,830
XVIII.	21. Agriculture and Fisheries .	2,30,953	3,500	2,100	..	2,36,553	2,16,098	20,455
XX.	23. Co-operative Department .	96,033	..	500	..	96,533	92,868	3,665
XXVII.	29. Scientific and Miscellaneous Departments .	94,690	2,200	...	..	96,890	89,710	7,180
XXVIII	40. Miscellaneous .	85,289	2,925	..	..	88,214	79,919	8,295
	Grand Total .	1,10.14,760	1,20,890	1,97,100	...	1,23,32,750	1,09,46010	13,86,740

Separate Sheet attached

Excess Expenditure under Voted Grants.

The following statement shows the cases where-in the actual expenditure—exceeded the final voted grant.

Grant No.	Name of grant.	Original Grant.	Supplementary and Additional grant voted.	Supplementary and Additional grant sanctioned under Section 32 of Regn. I of 1108.	Diversions and Surrenders.	Final Grant.	Actual Expenditure.	Excess over final grant.
		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
VII.	3. Salt	1,26,542	...	...	−1,587	1,24,955	1,25,286	...
	4. Excise	3,80,101	185	...	+1,555	3,81,841	3,86,173	...
	5. Customs	90,183	...	...	+32	90,215	87,516	...
V A.	Excise duty on matches	16,000	...	...	..	16,000	14,415	...
	Total of Grant No. VII	6,12,826	185	...	..	6,13,011	6,13,390	379
XV.	15. General Administration—Legislative Bodies	67,500	..	..	...	67,500	70,826	3,326
XVI.	17. Jails	91,262	...	7,000	...	98,262	98,415	153
XXVI.	28. Stationery and Printing	2,69,141	...	...	...	2,69,141	2,72,141	3,000
XXIX.	(a) Anchal Working—Expenses	3,74,175	...	...	...	3,74,175	3,89,391	...
	(b) Anchal—Capital Account	10,240		..	...	10,240	9,657	...
	Total of Grant No. XXIX	3,84,415	..	..	...	3,84,415	3,99,048	14,633
	Grand Total	14,25,144	185	7,000	...	14,32,329	14,53,820	21,491

Annexure III.

THE TRAVANCORE WORKMEN'S COMPENSATION BILL.

(As revised by the Select Committee.)

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THE TRAVANCORE WORKMEN'S COMPENSATION BILL.

(As revised by the Select Committee.)

(Words Italicised indicate the amendments suggested by the Select Committee.)

Preamble.

Whereas it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident it is hereby enacted as follows :—

CHAPTER I.

Preliminary.

Short title, extent and commencement.

1. (1) This Regulation may be called the Travancore Workmen's Compensation Regulation.

(2) It extends to the whole of Travancore.

(3) It shall come into force on *such days as Our Government may fix by notification in Our Government Gazette.*

Definitions.

2. (1) In this Regulation, unless there is anything repugnant in the subject or context,—

(*a*) "adult" and "minor" mean respectively a person who is not and a person who is under the age of fifteen years ;

(*b*) "Commissioner" means a Commissioner for Workmen's Compensation appointed under Section 23 ;

(*c*) "compensation" means compensation as provided for by this Regulation ;

(*d*) "dependant" means any of the following relatives of a deceased workman, namely :—

(i) a *widow*, a minor legitimate son, and unmarried legitimate daughter, or a widowed mother ; and

(ii) if wholly or in part dependant on the earnings of the workman at the time of his death a widower, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a daughter legitimate or illegitimate if married and a minor or if widowed, a minor brother, an unmarried or widowed sister, a widowed daughter-in-law, a minor child of a deceased son, *a minor child of a deceased daughter where no parent of the child is alive* or where no parent of the workman is alive, a maternal grand-parent or a paternal grand-parent ;

(*e*) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him ;

(*f*) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business but does not include an individual manager subordinate to an employer ;

(*g*) "partial disablement" means, where the disablement is of a emporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement;

(*h*) "prescribed" means prescribed by rules made under this Regulation;

(*i*) "qualified medical practitioner" means any person possessing the qualifications prescribed in that behalf or any person declared by Our Government, by notification in Our Government Gazette, to be a qualified medical practitioner for the purposes of this Regulation;

(*j*) "railway" means a railway declared to be such by Our Government, and "railway servant" means a railway servant so prescribed:

(*k*) "seaman" means any person forming part of the crew of any ship, but does not include the master of the ship;

(*l*) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: provided that permanent total disablement shall be deemed to result from the permanent total less of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent:

(*m*) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment;

(*n*) "workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is—

(i) a railway servant not employed in any such capacity as is specified in Schedule II, or

(ii) employed on monthly wages not exceeding three hundred rupees, in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Regulation and whether such contract is expressed or implied, oral, or in writing; but does not include any person working in the capacity of a member of Our military forces; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department of Our Government shall, for the purposes of this Regulation, unless a contrary intention appears, be deemed to be the trade or business of such authority or department;

(3) Our Government after giving, by notification in Our Government Gazette, not less than three months' notice of their intention so to do, may, by a like notification, add to Schedule II any class of persons employed in any occupation which they are satisfied is a hazardous occupation, and the provisions of this Regulation shall thereupon apply to such classes of persons;

Provided that in making such addition Our Government may direct that the provisions of this Regulation shall apply to such classes of persons in respect of specified injuries only.

CHAPTER II.

Workmen's Compensation.

Employers' liability for compensation.

3. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable—

(*a*) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding seven days;

(*b*) in respect of any injury not resulting in death, caused by an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or, to a rule expressly framed, for the purpose of securing the safety of workman, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

(2) *If a workman employed in any employment specified in Part (A) of Schedule III contracts any disease specified therein as occupational disease peculiar to that employment*, or if a workman whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in *part* (B) of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this Section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation.—For the purpose of this sub-section a period of service shall be deemed to be continuous which has not included a period of service under any other employer *in the same kind of employment.*

(3) Our Government, after giving, by notification in Our Government Gazette, not less than three months' notice of their intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which shall be deemed for the purposes of this Section to be occupational diseases peculiar to those employments

respectively, and the provisions of sub-section (2) shall thereupon apply as if such diseases had been declared by this Regulation to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-section (2) and (3) no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person ; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(*a*) If he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(*b*) If an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Regulation.

Amount of compensation.

4. (1) Subject to the provisions of this Regulation, the amount of compensation shall be as follows, namely :—

A. Where death results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the second column thereof, and

(ii) in the case of a minor—two hundred rupees ;

B. Where permanent total disablement results from the injury—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—the amount shown against such limits in the third column thereof, and

(ii) in the case of a minor—twelve hundred rupees ;

C. Where permanent partial disablement results from the injury—

(i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specifed therein as being the percentage of the loss of earning capacity caused by that injury, and

(ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury

Explanation.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries ;

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day after the expiry of a waiting period of seven days from the date of the disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter,—

(i) in the case of an adult in receipt of monthly wages falling within limits shown in the first column of Schedule IV—of the sum shown against such limits in the fourth column thereof, and

(ii) in the case of a minor—of one-half of his monthly wages, subject to a maximum of thirty rupees ;

Provided that—

(*a*) There shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be ; and

(*b*) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning, after the accident.

(2) On the ceasing of the disablement before the date on which any half monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

Method of calculating wages.

5. For the purposes of this Regulation the monthly wages of a workman shall be calculated as follows, namely :—

(*a*) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period :

(*b*) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month the monthly wages of the workman shall be deemed to be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman, employed on the same work by the same employer, or if there was no workman so employed, by a workman employed on similar work in the same locality ;

(*c*) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

Explanation.—A period of service shall, for the purposes of this section be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

Review.

6. (1) Any half-monthly payment payable under this Regulation, either under agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Regulation, on application made without such certificate.

(2) Any half-monthly payment may, on review under this Section, subject to the provisions of this Regulation, be continued, increased, decreased, or ended, or if the accident, is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

Commutation of half-monthly payments.

7. Any right to receive half-monthly payments may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

Distribution of compensation.

8. (1) No payment of compensation in respect of a workman whose injury has resulted in death, and no payment of a lump sum as compensation to a woman or a person under a legal disability, shall be made otherwise than by deposit with the Commissioner, and no such payment made directly by an employer shall be deemed to be a payment of compensation;

Provided that, in the case of a deceased workman, an employer may make to any dependant advances on account of compensation not exceeding an aggregate of one hundred rupees and so much of such aggregate as does not exceed the compensation payable to that dependant shall be deducted by the Commissioner from such compensation and repaid to the employer

(2) Any other sum amounting to not less than ten rupees which is payable as compensation may be deposited with the Commissioner on behalf of the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any compensation deposited with him.

(4) On the deposit of any money under sub-section (1) as compensation in respect of a deceased workman the Commissioner shall deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding twenty-five rupees and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of compensation. If the Commissioner is satisfied, after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(5) Compensation deposited in respect of a deceased workman shall, subject to any deduction made under sub-section (4), be apportioned, among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion of the Commissioner be allotted to any one dependant.

(6) Where any compensation deposited with the Commissioner is payable to any person, the Commissioner shall, if the person to whom the compensation is payable is not a woman or a person under a legal disability nd may, in other cases, pay the money to the person entitled thereto.

(7) Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the woman, or of such person during his disability, in such manner as the Commissioner may direct; and where a half-monthly payment is payable to any person under a legal disability, the Commissioner may, of his own motion or on application made to him in this behalf, order that the payment be made during the disability to any dependant of the workman or to any other person whom the Commissioner thinks best fitted to provide for the welfare of the workman.

(8) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case.

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

(9) Where the Commissioner varies any order under sub-section (8) by reason of the fact that payment off compensation to any person has been obtained by fraud, impersonation or other improper means, any amount so paid to or on behalf of such person may be recovered in the manner hereinafter provided in Section 36.

Compensation not to be assigned, attached or charged.

9. Save as provided by this Regulation, no lump sum or half-monthly payment payable under this Regulation shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

10. (1) *No claim for compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within one year of the occurence of the accident, or in case of death within one year from the date of death.*

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease.

Provided further, that the want of or any defect or irregularity in a notice shall not be a bar to the *entertainment of a claim*:—

(a) if the claim is *preferred* in respect of the death of a workman resulting from an accident which occurred on the premises of the employer, or at any place where the workman at the time of the accident was working under the control of the employer or of any person employed by him, and

the workman died on such premises or at such place, or on any premises belonging to the employer, or died without having left the vicinity of the premises or place where the accident occurred, or

(*b*) If the employer *or any one of several employers or any person responsible to the employer for the management, of any branch of the trade or business in which the injured workman was employed* had knowledge of the accident from any other source at or about the time when it occurred :

Provided, further, that the Commissioner may *entertain* and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been *preferred* in due time as provided in this sub section, if he is satified that the failure so to give the notice or *prefer* the claim, as the case may be was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened and shall be served on the employer or upon any one of several employers, or upon any person responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

(3) Our Government may require that any prescribed class of employers shall maintain at their premises at which workmen are employed a notice book, in the prescribed form, which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting *bona fide* on his behalf.

(4) A notice under this Section may be served by delivering it at, or sending it by registered post addressed to, the residence or any office or place of business of the person on whom it is to be served, or, where a notice book is maintained, by entry in the notice book.

Power to require from employers statements regarding fatal accident.

11. (1) Where a Commissioner receives information from any source that a workman has died as a result of an accident arising out of and in the course of his employment, he may, send by registered post a notice to the workman's employer requiring him to submit, within thirty days of the service of the notice, a statement, in the prescribed form, giving the circumstances attending the death of the workman, and indicating whether, in the opinion of the employer, he is or is not liable to deposit compensation on account of the death.

(2) If the employer is of opinion that he is liable to deposit compensation he shall make the deposit within thirty days of the service of the notice.

(3) If the employer is of opinion that he is not liable to deposit compensation, he shall in his statement indicate the grounds on which he disclaims liability.

(4) Where the employer has so disclaimed liability, the Commissioner, after such inquiry as he may think fit, may inform any of the dependants of the deceased workman that it is open to the dependants to prefer a claim for compensation, and may give them such other further information as he may think fit.

12. (1) Where by any law for the time being in force, notice is required to be given to any authority, by or on behalf of an employer, or any accident occurring on his premises which results in death the person required to give the notice shall, within seven days of the death, send a report to the Commissioner giving the circumstances attending the deaths :

Reports of fatal accidents.

Provided that where Our Government have so prescribed the person required to give the notice may instead of sending such report to the Commissioner send it to the authority to whom he is required to give the notice.

(2) Our Government may, by notification in Our Government Gazette extend the provisions of sub-section (1) to any class of premises other than those coming within the scope of that sub section, and may, by such notification, specify the persons who shall send the report to the Commissioner.

13. (1) Where a workman has given notice of an accident, he shall, if the employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination and any workman who is in receipt of a half-monthly payment under this Regulation, shall if so required, submit himself for such examination from time to time :

Medical examination.

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than accordance with rules made under this Regulation or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination, voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (2) or sub-section (3), dies without having submitted himself for medical examination as required by either of those subsections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(5) Where under sub-section (2), or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and if the period of suspension commences before the expiry of the waiting period referred to in Clause (*d*) of sub-section (1) of Section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, *if it is proved that the workman has not thereafter been regularly attended by a qualified medical practitioner or having been so attended has deliberately failed to follow his instructions and that such refusal, disregard or failure was unreasonable* in the circumstances of the case and that the enjury has been aggravated thereby the injury and resulting disablement shall be deemed to be of the same nature and duration as they might resonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner, *whose instructions he had followed*, and compensation, if any, shall be payable accordingly.

Workmen under contractor.

14. (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the Principal, this Regulation shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere, than on, in or about the premises on which the principal has undertaken or usually undertakes as the case may be, to execute the work or which are otherwise under his control or management.

Remedies of employer against stranger.

15. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under Section 14 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

16. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Regulation to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in any law for the time being in force relating to insolvency of the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

Insolvency of employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with any terms or conditions of the contract (other than a stipulation for the payment of premia) the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman:

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under Section 62 of the Travancore Insolvency Regulation, 1108, *or under Section 285 of the Travancore Companies Regulation 1114* are in the distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Regulations shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be reduced if application were made for that purpose under Section 7 and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provisions of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section 3 but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This Section shall not apply where a company is wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company.

17. This Regulation shall apply in the case of workman who are masters of ships or seamen subject to the following modifications, namely :—

Special provisions relating to masters and seamen.

(1) The notice of the accident and the claim for compensation may, except where the person injured is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seamen to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been so lost.

(3) Where an injured master or seaman is discharged or left behind in any part of the British dominions or in a foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to Our Government shall, in any proceedings for enforcing the claim, be admissible in evidence ;

(*a*) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made ;

(*b*) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross examine the witness ; and

(*c*) if the deposition was made in the course of criminal proceeding on proof that the deposition was made in the presence of the person accused ;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and certificate by such person that the defendant or the person accused, had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) In the case of the death of a master or seaman leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being relating to merchant shipping liable to pay the expenses of burial of the master or seaman, return to the employer the full amount of the compensation deposited under sub-section (1) of Section 8 without making the deduction referred to in sub-section (4) of that section.

(5) No half-monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being relating to merchant shipping liable to defray the expenses of maintenance of the injured master or seaman.

18. Our Government may by notification in Our Government Gazette, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation, has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as our Government may direct.

Returns as to compensation.

19. Any contract or agreement whether made before or after the commencement of this Regulation, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Regulation.

Contracting out.

20. Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory, a certificate of age granted in respect of such person under the provisions of the law for the time being in force relating to factories, before the occurrence of the injury shall be conclusive proof of the age of such person.

Proof of age.

Penalties.

21. (1) Whoever—

(a) fails to maintain a notice-book which he is required to maintain under sub-section (3) of section 10, or

(b) fails to send to the Commissioner a statement which he is required to send under sub-section (1) of Section II, or

(c) fails to send report which he is required to send under Section 12, or

(d) fails to make a return which he is required to make under Section 18 shall be punishable with fine which may extend to one hundred rupees.

(2) No prosecution under this section shall be instituted except by or with the previous sanction of a Commissioner, and no Court shall take cognisance of any offence under this section, unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

CHAPTER III.

Commissioners.

22. (1) If any question arises in any proceedings under this Regulation as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation including any question as to the nature or extent of disablement, the question shall, in default of agreement, be settled by a Commissioner.

Reference to Commissioners.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Regulation required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Regulation.

23. (1) Our Government may, by notification in Our Govenment Gazette, appoint any person to be a Commissioner for workmen's compensation for such local area as may be specified in the notification.

Appointment of Commissioners.

(2) Where more than one Commissioner has been appointed for any local area, Our Government may, by general or special order, regulate the distribution of business between them.

(3) Any Commissoner may, for the purpose of deciding any matter referred to him for decision under this Regulation, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

(4) Every Commissioner shall be deemed to be a public servant within the meaning of the Travancore Penal Code.

Venue of proceedings and transfer.

24. (1) Where any matter is under this Regulation be done by or before a Commissioner, the same shall subject to the provisions of this Regulation and to any rules made hereunder, be done by or before a Commissioner for the local area in which the accident took place which resulted in the inquiry:

Provided that where the workman is the master of a ship or a seaman, any such matter may be done by or before a Commissioner for the local area in which the owner or agent of the ship, resides or carries on business.

(2) If a Commissioner is satisfied that any matter arising out of any proceeding pending before him can be more conveniently dealt with by any other Commissioner, he may subject to rules made under this Regulation, order such matter to be transferred to such other Commissioner either for report or for disposal, and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that the Commissioner shall not, where any party to the proceedings has appeared before him, make any order of transfer relating to the distribution among dependants of a lump sum without giving such party an opportunity of being heard ; and

Provided *further* that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lump sum shall be transferred for disposal under this sub-section to a Commissioner save with the previous sanction of Our Government, unless all the parties to the proceedings agree to the transfer.

(3) The Commissioner to whom any matter is so transferred shall subject to the rules made under this Regulation, inquire thereinto and if the matter was transferred for report, return his report thereon or, if the matter was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was transferred shall decide the matter referred in conformity with such report.

(5) Our Government may transfer any matter from any Commissioner to any other Commissioner.

Application when permissible and form of application.

25. (1) No application for the settlement of any matter by a Commissioner other than an application by a dependant or dependants for, compensation shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) An application to a Commissioner may be made in such form and shall be accompanied by such fee, if any as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely :—

(*a*) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims:—

(*b*) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission ;

(*c*) the names and addresses of the parties ; and

(*d*) except in the case of an application by dependants for compensation a concise statement of the matters on which agreement has and of those on which agreement has not been come to.

(3) If the applicant is illiterate or for any other reason is unable to furnish the required information in writing, the application shall, if the applicant so desires, be prepared under the direction of the Commissioner.

Power of Commissioner to require further deposit in cases of fatal accident.

26. (1) Where any sum has been deposited by an employer as compensation payable in respect of a workman whose injury has resulted in death, and in the opinion of the Commissioner such sum is insufficient, the Commissioner may, by notice in writing stating his reasons, call upon the employer to show cause why he should not make a further deposit within such time as may be stated in the notice.

(2) If the employer fails to show cause to the satisfaction of the Commissioner the Commissioner can make an award determining the total amount payable, and requiring the employer to deposit the deficiency.

Powers and procedure of Commissioners.

27. The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1100, for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects, and the Commissioner shall be deemed to be a Civil Court for all the purposes of Section 173 and of Chapter XXXIV of the Code of Criminal Procedure.

Appearance of parties.

28. Any appearance, application or act required to be made or done by any person before or to a Commissioner (other than an appearance of a party which is required for the purpose of his examination as a witness) may be made or done on behalf of such person by a legal practitioner *or by an official of an Insurance Company or a registered Trade Union authorised in writing by such person or with the permission of the Commissioner by any other person so authorised.*

Method of recording evidence

29. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record :

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record :

Provided further that the evidence of any medical witness shall be taken down as nearly as may be word for word.

Costs.

30. All costs incidental to any proceedings before a Commissioner shall, subject to rules made under this Regulation, be in the discretion, of the Commissioner.

Power to submit cases.

31. A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

Registration of agreements.

32. (1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a woman or a person under a legal disability a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a Register in the prescribed manner :

Provided that—

(*a*) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the Parties concerned ;

(*b*) the Commissioner may at any time rectify the Register ;

(*c*) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise or on agreement as to the amount of compensation payable to a woman or a person under a legal disability ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement and may make such order including an order as to any sum already paid under the agreement as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub section (1) shall be enforcible under this Regulation notwithstanding anything contained in any other law for the time being in force.

Effect of failure to register agreement.

33. Where a memorandum of any agreement, the registration of which is required by Section 32 is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the Provisions of this Regulation and notwithstanding anything contained in the proviso to sub-section (i) of Section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whethar under the agreement or otherwise.

Appeals.

34. (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely.

(*a*) an order awarding as compensation a lump sum whether by way of redemption of a half monthly payment or otherwise or disallowing claim in full or in part or a lump sum ;

(*b*) an order refusing to allow redemption of a half-monthly payment;

(*c*) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself it be such dependant;

(*d*) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of Section 14; or

(*e*) an order refusing to register a memorandum or agreement or registering the same or providing for the registration of the same subject to conditions.

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (*b*) unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (*a*) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of Section 5 of the Travancore Limitation Regulation shall be applicable to appeals under this section.

Withholding payment pending appeal.

35. Where an employer makes an appeal under clause (*a*) of sub-section (1) of Section 34, the Commissioner may, and if so directed by the High Court, shall, pending the decision of the appeal withhold payment of any sum in deposit with him.

Recovery.

36. The Commissioner may recover as an arrear of land revenue any amount payable by any person under this Regulation whether under an agreement for the payment of compensation or otherwise and the Commissioner shall be deemed to be a Tahsildar within the meaning of the Revenue Recovery Regulation, Regulation I of 1068 as subsequently amended.

CHAPTER IV.

Rules.

Power of Government to make rules.

37. (1) Our Government may make rules to carry out the purposes of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) for prescribing the intervals at which and the conditions subject to which an application for review may be made under Section 6 when not accompanied by a medical certificate:

(*b*) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for medical examination under sub-section (1) of Section 13;

(c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Regulation and by the parties in such cases;

(d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases;

(e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another;

(f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance;

(g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered;

(h) for the withholding by Commissioners, whether in whole or in part, of half-monthly payments pending decision on applications for review of the same;

(i) for regulating the scales of costs which may be allowed in proceedings under this Regulation;

(j) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Regulation;

(k) for the maintenance by Commissioners of registers and records of proceedings before them;

(l) for prescribing the classes of employers who shall maintain notice books under sub-section (3) of Section 10 and the form of such notice-books;

(m) for prescribing the form of statement to be submitted by employers under Section II;

(n) for prescribing the cases in which the report referred to in Section 12 may be sent to an authority other than the Commissioner;

(o) for many other matter which is or may be prescribed; and

(p) generally for carrying out the provisions of this Regulation.

Publication of rules.

38. (1) The power to make rules conferred by Section 37 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (c) of Section 6 of the Travancore General Clauses Regulation of 1072, as that at or after which a draft of rules proposed to be made under Section 37 will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published.

(3) Rules so made shall be published in Our Government Gazette and on such publication shall have effect as if enacted in this Regulation.

Rules to give effect to arrangements with other countries for the transfer of money paid as compensation.

39. (1) *Our Government may, by notification in Our Government Gazette, make rules for the transfer to any part of any other country of money deposited with a Commissioner under this Regulation which has been awarded to or may be due to any person residing or about to reside in such part and for the receipt, distribution and administration in Travancore of any money deposited under the law relating to workmen's compensation in any part of any other country and which has been awarded to or may be due to any person residing or about to reside in Travancore.*

Provided that no sum deposited under this Regulation in respect of fatal accidents shall be so transferred without the consent of the employer concerned until the Commissioner receiving the sum has passed orders determining its distribution and apportionment under the provisions of subsections 4 and 5 of Section 8.

(2) *Where money deposited with a Commissioner has been so transferred in accordance with the rules made under this section the provisions elsewhere contained in this Regulation regarding distribution by the Commissioner for compensation deposited with him shall cease to apply in respect of any such money.*

SCHEDULE I.

[*See Sections 2 (1) and (4).*]

List of injuries deemed to result in permanent partial disablement.

Injury.	Percentage of loss of earning capacity.
Loss of right arm above or at the elbow ...	70
Loss of left arm above or at the elbow ...	60
Loss of right arm below the elbow ...	60
Loss of leg at or above the knee ...	60
Loss of left arm below the elbow ...	50
Loss of leg below the knee ...	50
Permanent total loss of hearing ...	50
Loss of eye ...	30
Loss of thumb ...	25
Loss of all toes of one foot ...	20
Loss of one phalanx of thumb ...	10
Loss of index finger ...	10
Loss of great toe ...	10
Loss of any finger other than index finger ...	5

NOTE.—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member.

SCHEDULE II.

[*See Section 2 (1) (n).*]

List of persons who, subject to the provisions of Section 2 (1) (n) are included in the definition of workmen.

The following persons are workmen within the meaning of Section 2 (1) (n) and subject to the provisions of that Section, that is to say, any person who is—

(i) employed, otherwise than in a clerical capacity or on a railway in connection with the operation or maintenance of *a lift or a vehicle propelled by steam or other mechanical power or by electricity; or*

(ii) employed, otherwise than in a clerical capacity, in any premises wherein, or within the precincts where of, on any one day of the preceding twelve months ten or more persons have been employed in any manufacturing process, as defined in the law relating to Factories for the time being in force, or in any kind of work whatsoever incidental to or connected with any such manufacturing process or with the article made, and steam, water or other mechanical power or electrical power is used ; or

(iii) employed for the purpose of making, altering, repairing, ornamenting, finishing or otherwise adopting for use, transport or sale any article or part of an article in any premises wherein or within the precincts whereof on any one day of the preceding twelve months, fifty or more persons have been so employed ; or

(iv) employed in the manufacture or handling of explosives in any premises wherein, or within the precincts whereof on any one day of the preceding twelve months, ten or more persons have been so employed ; or

(v) employed, in any mine as defined in clause (*f*) of Section 2 (1) of the Travancore Mines and Minerals Regulation, in any mining operation or in any kind of work, other than clerical work, incidental to or connected with any mining operation or with the mineral obtained, or in any kind of work whatsoever below ground :

Provided that any excavation in which on any day, of the preceding twelve months more than fifty persons have been employed or explosives have been used, and whose depth from its highest or its lowest point does not exceed twenty feet shall be deemed not to be a mine for the purpose of this clause ; or

(vi) employed as the master or as a seaman of—

(*a*) any ship which is propelled wholly or in part by steam or other mechanical power or by electricity or which is towed or intended to be towed by a ship so propelled, or

(*b*) any ship not included in sub-clause (a) of fifty tons net tonnage or ever ; or

(vii) employed for the purpose of loading, unloading, fuelling, constructing, repairing, demolishing, cleaning or painting any ship of which he is not the master or a member of the crew, or in the handling or transport within the limits of any port subject to the Travancore Ports Regulation, 1094, of goods which have been discharged from or are to be loaded into any vessel ; or

(viii) employed in the construction, repair or demolition of—

(*a*) any building which is designed to be or is or has been more than one story in height above the ground or twenty feet or more from the ground level to the apex of the roof, or

(*b*) any dam or embankment which is twenty feet or more in height from its lowest to its highest point, or

(*c*) any road, bridge, or tunnel ; or

(*d*) any wharf, quay, sea-wall or other marine work including any moorings of ships ; or

(ix) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any over-head electric line or cable or post or standard for the same ; or

(x) employed, otherwise than in a clerical capacity, in the construction, working, repair or demolition of any ærial ropeway, canal, pipeline, or sewer; or

(xi) employed in the service of any fire brigade; or

(xii) employed upon a railway either directly or through a subcontractor, by a person fulfilling a contract with the railway administration; or

(xiii) employed as an Inspector, guard, sorter or van peon in any Railway Mail Service or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department or the Travancore Anchal Department; or

(xiv) employed, otherwise than in a clerical capacity, in connection with operations for winning natural petroleum or natural gas; or

(xv) employed in an occupation involving blasting operations; or

(xvi) employed in the making of any excavation in which on any one day of the preceding twelve months more than fifty persons have been employed or explosives have been used, or whose depth from its highest to its lowest points exceeds twenty feet; or

(xvii) employed in the operation of any ferry boat capable of carrying more than ten persons; or

(xviii) employed, otherwise than in a clerical capacity, on any estate which is maintained for the purpose of growing cinchona, coffee, rubber or tea, and on which on any one day in the preceding twelve months twenty-five or more persons have been so employed; or

(xix) employed, otherwise than in a clerical capacity, in the generating, transforming or supplying of electrical energy or in the generating or supplying of gas; or

(xx) employed in a light-house, light-vessel, fog-signal, buoy, beacon, or any mark, sign or apparatus exhibited or used for the guidance of ships; or

(xxi) employed in producing cinematograph pictures intended for public exhibition or in exhibiting such pictures; or

(xxii) employed in the training, keeping or working of elephants or wild animals *or any operations for the catching or hunting of elephants or other wild animals; or*

(xxiii) employed as a driver, or

(xxiv) *employed in any occupation involving the handling and manipulation of radium or X-rays apparatus or contact with radio-active substances.*

Explanation.—In this Schedule, "the preceding twelve months" relates in any particular case to the twelve months ending with the day on which the accident in such case occurred.

SCHEDULE III.

(*See Section 3.*)

List of occupational diseases.

PART A.

Anthrax.	*Any employment :-* (a) *involving the handling of wool, hair bristles or animal carcasses or parts of such carcasses including hides, hoofs and horns, or* (b) *in connection with animals infected with anthrax, or* (c) *involving the loading, unloading or transport of any merchandise.*
Compressed airillness or its sequelae.	*Any process carried on in compressed air.*
Poisoning by lead tetra-ethyl.	*Any process involving the use of lead tetra-ethyl.*
Poisoning by nitrous fumes.	*Any process involving exposure to nitrous fumes.*

PART B.

Lead Poisoning or its sequelae excluding poisoning by lead tetra-ethyl.	*Any process involving the use of lead or any of its preparations or compounds except lead tetra ethyl.*
Phosphorous poisoning or its sequelae	*Any process involving the use of phosphorous or its preparations or compounds.*
Mercury poisoning or its sequelae.	*Any process involving the use of mercury or its preparations or compounds.*
Poisoning by benzene and its homologues or its sequelae of such poisoning-	*Handling benzene or any of its homologues and any process in the manufacture or involving the use of benzene or any of its homologues.*
Chrome ulceration or its sequelae.	*Any process involving the use of chromic acid or bichromate of ammonium, pottassium or sodium or other preparations.*
Arcenical poisoning or its sequelae.	*Any process involving the production, liberation or utilisation of arsenic or its compounds.*
Pathological manifestations due to :— (a) *radium and other radio active substances.* (b) *X rays.*	*Any process involving exposure to the action of radium, radio-active substances or X-rays.*
Primary epithelio-matous cancer of the skin.	*Any process involving:—* (a) *the handling or use of tar, pitch bitumen, mineral oil paraffine or the compounds, products or residue of these substances ;* (b) *the roasting or shelling of cashewnut or the handling of roast cashewnut or extraction of cashewnut oil.*

SCHEDULE IV.

(*See Section 4.*)

Compensation payable in certain cases.

Monthly wages of the workman injured,		Amount of compensation for—		Half monthly payment as compensation for temporary disablement of adult.	
		Death of adult.	Permanent total disablement of adult.		
More than	But not more than				
Rs.	Rs.	Rs.	Rs.	Rs. Half his wages.	As. monthly
0	10	500	700		
10	15	550	770	5	0
15	18	600	840	6	0
18	21	630	882	7	0
21	24	720	1,008	8	0
24	27	810	1,134	8	8
27	30	900	1,260	9	0
30	35	1,050	1,470	9	8
35	40	1,200	1,680	10	0
40	45	1,350	1,890	11	4
45	50	1,500	2,100	12	8
50	60	1,800	2,520	15	0
60	70	2,100	2,940	17	8
70	80	2,400	3,360	20	0
80	100	3,000	4,200	25	0
100	200	3,500	4,900	30	0
200	...	4,000	5,600	30	0

Office of the Secretary to the Sri Mulam Assembly,
15th October 1938.

A. GUNAMONY,
Secretary to the Sri Mulam Assembly.

Annexure IV.

R. O. C. No. 857 of 38/Legislative.

The following Bill, together with the Statement of Objects and Reasons, is published as ordered by the Dewan, under Rule 31 of the Travancore Legislative Rules.

(By order)

Huzur Cutcherry, Trivandrum, 23rd November 1938.

M. K. NILAKANTA AIYAR, *Ag. Chief Secretary to Government.*

THE TRAVANCORE MARKETS ACT (AMENDMENT) BILL.

An Act to amend the Travancore Markets Regulation of 1092 (Act VII of 1092) for certain purposes.

Preamble.

Whereas it is expedient further to amend the Travancore Markets Act of 1092 (Act VII of 1092) asamended by Act VI of 1109 for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title and commencement.

I. (i) This Act may be called the Travancore Markets(Amendment) Act III—

(ii) It shall come into force at once.

Amentment of Soction 28. Act VII of 1092.

2. In Section 28 of the Travancore Markets Act 1092 (Act VII of 1092) as amended by Act VI of 1109·

(i) in sub-section (I), for the word "Dewan", the words "Land Revenue and Income Tax Commissioner" shall be substituted.

(ii) the provisos to sub section (2) shall be deleted.

(iii) after sub section (2), the following shall be inserted as sub-sections (3) and (4) and the existing sub-sections (3) and (4) shall be renumbered as sub-section (5) and (6):—

"(3) There shall be no appeal from the decision or order passed in appeal by the Land Revenue and Income Tax Commissioner or by the Division Peishkar.

(4) It shall be lawful for the Dewan to revise any decision or order passed by any subordinate officer under this Act"

STATEMENT OF OBJECTS AND REASONS.

Under Section 28 of the Markets Act an appeal shall lie to the Dewan from any order of a Division Peishkar under that Act Provision was so made because the post of the Land Revenue and Income Tax Commissioner was not in existence at the time of the passing of the Markets Act. Now that the post of the Land Revenue and Income Tax Commissioner has been in existence for the past several years, it is proposed to confer upon him the appellate authority in respect of decisions and orders of Dewan Peishkars. This is only proper considering his position as the Head of the Land Revenue

and Income Tax Department. He hears and decides appeals against the decisions of Division Peishkar under the Revenue Recovery Act and the land Conservancy Act. As in the above matters, he will be in a better position to dispose of appeals under the Markets Act more expeditiously. The revisional powers of the Dewan are, however, proposed to be retained. The proposed amendments to Section 28 are intended to carry out this object.

Advantage is also taken of the occasion to rearrange and number the several sub sections of Section 28.

S. KRISHNA PILLAI,
Legal Remembrancer to Government.

NOTE. For purpose of convenience, Section 28 as it would stand when amended as proposed, is given below. (The portions italicised indicate the changes proposed.)

" 28. (1) An appeal shall lie to the *Land Revenue and Income Tax Commissioner* from any order of a Division Peishkar passed under this Act.

(2) Our Government may direct that an appeal from the order of any officer empowered under section 27 shall lie to the Division Peishkar.

(3) *There shall be no appeal from the decision or order passed in appeal by the Land Revenue and Income Tax Commissioner or by the Division Peishkar.*

(4) *It shall be lawful for the dewan to revise any decision or order passed by any subordinate officer under this Act.*

(5) Pending disposal of any appeal or revision under this Act the appellate or revisional authority may suspend the execution of the order complained against.

(6) No order shall be passed in appeal or revision without previous notice to the party to be affected by such order.

Annexure V.

R. O. C. No. 871 of 38/Legislative.

The following Bill, together with the statement of Objects and Reasons, is published as ordered by the Dewan, Under Rule 31 of the Travancore Legislative Rules.

Huzur Cutcherry, (By order) M. K. NILAKANTA AIYAR
Trivandrum, 26th November 1938. Ag. *Chief Secretary to Government.*

THE TRAVANCORE VILLAGE PANCHAYAT COURTS ACT (AMENDMENT) BILL.

AN ACT TO AMEND THE TRAVANCORE VILLAGE PANCHAYAT COURTS ACT (ACT I OF 1090 AS AMENDED BY ACT II OF 1106).

Preamble.

Whereas it is expedient to amend the Travancore Village Panchayat Courts Act (Act I of 1090 asamended by Act II of 1106) for a certain purpose; It is hereby enacted as follows:—

Short title and commencement.

1. (i) This Act may be called the Travancore Village Panchayat Courts (Amendment) Act, 111.

(ii) It shall come into force atonce.

Amendment of Section 76, Act I of 1090.

2. In Section 76 of the Travancore Village Panchayat Courts Act (Act I of 1090 as amended by Act II of 1106), between the words "the value of the suit" and the words "shall be paid,' the following words shall be inserted, namely:—

"Subject to a minimum of one chuckram."

STATEMENT OF OBJECTS AND REASONS.

The institution-fee leviable under Section 76 of the Village Panchayat Courts Act, is five per cent of the value of the suit instituted. This five per cent *ad valorem* fee when worked out, results in very small amounts in cash and sometimes fraction of a cash. The proposed amendment to Section 76 (made on the recommendation of the High Court) prescribes a minimum fee of one chuckram to be levied in such cases.

S. KRISHNA PILLAI,
Legal Remembrancer to Government.

Annexure VI.

R. O. C. No. 874 of 38/Legis.

The following Bill, together with the Statement of Objects and Reasons, is published as ordered by the Dewan under Rule 31 of the Travancore Legislative Rules.

Huzur Cutcherry, (By order) M. K. NILAKANTA AIYAR,
Trivandrum, 12th December 1938. Ag. *Chief Secretary to Government.*

THE TRAVANCORE REVENUE SUMMONS ACT AMENDMENT BILL.

AN ACT TO AMEND THE TRAVANCORE REVENUE SUMMONS ACT (V OF 1063) AS AMENDED BY ACTS V OF 1099 AND IV OF 1105 FOR A CERTAIN PURPOSE.

Preamble.

Wheras it is expedient to amend the Revenue Summons Atc (Act V of 1063) as amended by Act V of 1099 and IV of 1105 for a certain purpose

It is hereby enacted as follows:—

Short title and commencement.

1. (i) This Act may be called the Travancore Revenue Summons (Amendment) Act 111—

(ii) It shall come into force atonce.

Amendment of Section 4 of Act V of 1063.

2. In the second sentence Section 4 of the Revenue Summons Act (Act V of 1063) as amended by Act V of 1099 and IV of 1105, for the words "If the person summoned can not be found", the following words shall be substituted, namely;—

"If such persons refuse to acknowledge service of the summons as aforesaid, or if the person summoned cannot be found."

STATEMENT OF OBJECTS AND REASONS.

Section 4 of the Revenue Summons Act dealing with service of summons provides a case for affixture of a copy of the summons on the outer door of the house *only* in cases where the person summoned cannot be found. The section is silent as to the procedure to be followed in a case of refusal to acknowledge service of summons. This appears to be an omission. The point has been actually raised in certain appeal cases. The amendment proposed is to rectify the omission.

S. KRISHNA PILLAI,
Legal Remembrancer.

Sections.
18. Furnishing reports.
19. Abstract of proceedings of general meetings.
20. Custody and inspection of documents and supply of copies.
21. Powers of Registrar regarding returns.
22. Power of Registrar to order re-valuation.
23. Evidence of documents.
24. Summary of return to be published.
25. Returns to be published in statutory forms.
26. Alterations in the particulars furnished with application to be reported.

INVESTMENT, LOANS AND MANAGEMENT.

27. Investment of assets and restriction on loans.
28. Statement of investments of assets.
29. Prohibition of loans.
30. Liability of Directors, etc., for loss due to contraventions of Sections 27 and 29.
31. Assets of insurer how to be kept.
32. Limitation on employment of managing agents and on the remuneration payable to them.

INSPECTION.

33. Power of Registrar to order inspection.
34. Powers of investigator.

AMALGAMATION AND TRANSFER OF INSUANCE BUSINESS.

35. Amalgamation and transfer of insurance business.
36. Sanction of amalgamation and transfer by Court.
37. Statements required after amalgamation and transfer.

ASSIGNMENT OR TRANSFER OF POLICIES AND NOMINATIONS.

38. Assignment and transfer of life insurance policies,
39. Nomination by policy-holder.

COMMISSION AND REBATES AND LICENSING OF AGENTS.

40. Prohibition of payment by way of commission or otherwise for procuring business.
41. Prohibition of rebates.
42. Licensing of insurance Agents.
43. Register of Insurance Agents.
44. Prohibition of cessation of payments of commission.

SPECIAL PROVISIONS OF LAW.

45. Policy not to be called in question on ground of mis-statement after two years,
46. Application of Travancore Law to policies isfued in Travancore.
47. Payment of money into Court.

Sections.
48. Directors of insurers being companies.
49. Restriction on dividends and bonuses.
50. Notice of options available to the assured on the lapsing of a policy.
51. Supply of copies of proposals and medical reports.
52. Prohibition of business on dividing principles.

WINDING UP.

53. Winding up by the Court.
54. Voluntary winding up.
55. Valuation of liabilities.
56. Application of surplus assets of life insurance fund in liquidation or insolvency.
57. Winding up of secondary companies.
58. Schemes for partial winding up of insurance companies.
59. Return of deposits.
60. Notice of policy values.
61. Power of Court to reduce contracts of insurance.
62. Power of Government to impose reciprocal disabilities on foreign Companies.

SPECIAL PROVISION RELATING TO EXTERNAL COMPANIES.

63. Particulars to be filed by insurers established outside Travancore.
64. Books to be kept by insurers established outside Travancore.

PART III.

Provident Societies.

65. Definition of "Provident Society".
66. Application of this Part.
67. Name.
68 Insurable interest.
69 Dividing business.
70. Registration.
71. Prohibition of managing agents.
72. Working capital.
73. Deposits.
74. Rules.
75. Amendment of Rules.
67. Supply of copy of rules.
77. Registered Office.
78. Publication of authorised capital to contain also subscribed and paid-up capital.
79. Registers and books.
80. Revenue accounts, balance-sheet and annual statements.
81. Actuarial report and abstract.

Sections.
82. Submission of returns to Registrar.
83. Actuarial examination of Schemes.
84. Separation of accounts and funds.
85. Investment of Funds.
86 Inspection of books.
87. Inquiry by or on behalf of Registrar.
88. Winding up by Court and voluntary winding up.
89. Reduction of Insurance contracts.
90. Appointment of liquidator.
91. Powers of liquidator.
92. Procedure at liquidation.
93. Dissolution of provident Society.
94. Nomination and assignments.

PART IV.

Mutual Insurance Companies and Co-operative Life Insurance Societies.

95. Definitions.
96. Application of Regulation to Mutual Insurance Companies and Co-operative Life Insurance Societies.
97. Working capital of Mutual Insurance Companies and Co-operative Life Insurance Societies.
98. Deposits to be made by Mutual Insurance Companies and Cooperative Life Insurance Socities
99. Transferees and assignees of policies not to become members.
100. Publication of notices and documents of Mutual Insurance Companies and Co-operative Life Insurance Societies.
101. Supply of documents to members.

PART V.

Miscellaneous

102. Penalty for default in complying with or act in contravention of this Act.
103. Penalty for transacting insurance business in contravention of Sections 3, 6, 97 and 98.
104. Penalty for false statement in documents.
105. Wrongfully obtaining or withholding property.
106. Wrongly diminishing the insurance fund.
107. Previous sanction of Government for institution of proceedings.
108. Power of Court to grant relief.
109. Cognisance of offences.
110. Appeals.
111. Service of notices.
112. Declaration of interim bonus.
113. Acquisition of surrender values by policy.
114. Power of Our Government te make rules.

Sections.

115. Alteration of Forms.
116. Power to exempt from certain requirements
117. Saving of provisions of the Travancore Companies Regulation IX of 1114.
118. Exemption.
119. Policy forms to be deposited with the Registrar.
120. Determination of market value of securities deposited under this Regulation.
121. Amendment to first Schedule to the Travancore Limitation Regulation.
122. Repeals.

The First Schedule—Regulations and Forms for the preparation of Balance-Sheet.

The Second Schedule—Regulations and Forms for the preparation of Profit and Loss Accounts.

The Third Schedule—Regulations and Forms for the Preparation of Revenue Accounts.

The Fourth Schedule—Regulations for the Preparation of Abstracts of Actuaries, Reports and Requirements applicable to such Abstracts.

The Fifth Schedule—Regulations for preparing Statements of Business in force and Requirements applicable to such Statements.

The Sixth Schedule—Rule as to the Valuation of the Liabilities of an Insurer in Insolvency or Liquidation.

THE TRAVANCORE INSURANCE BILL.

Whereas it is expedient to consolidate and amend the law relating to the business of insurance; It is hereby enacted as follows:—

Preamble

PART I.

Preliminary.

Short title, extent and commencement.

1. (1) This Regulation may be called the Travancore Insurance Regulation, 11 .

(2) It extends to the whole of Travancore.

(3) It shall come into force on such date as Our Government may, by notification in the Government Gazette, appoint in that behalf.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context—

(1) "actuarly" means an actuarly possessing such qualifications as may be prescribed;

(2) "approved securities" means Government securities and any other security specifically declared by Our Government as approved for this purpose;

(3) "auditor" means a person qualified under the provisions of Section 182 of the Travancore Companies Regulation, 1114, to act as an auditor of companies;

(4) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer means certified by a principal officer of the insurer to be a true copy or a correct translation, as the case may be;

(5) "Court" means the Principal Civil Court of original jurisdiction in a district;

(6) "Foreign" Insurance Company" means a company incorporated under the law of any country other than Travancore and carrying on any class of insurance business in Travancore;

(7) "Government securities" means Government securities as defined in the Travancore Government Securities Regulation (III of 1099);

(8) "Insurance Agent" means an insurance agent licensed under Section 42 being and individual who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting procuring insurance business;

(9) "Insurance business" means any of the following classes of business :—

(*a*) life assurance or life insurance business, that is to say, the issue of, or the undertaking of liability under policies of insurance upon human life or the granting of annuities upon human life including, annuity business, that is to say, the business of effecting contracts of insurance for the granting of annuities on human life and, if so provided in the contract of insurance, disability and double indemnity and double indemnity accident benefits ;

(*b*) fire insurance, that is to say, the issue of or the undertaking of liability under policies of insurance against loss by or incidental to fire ;

(*c*) accident insurance business, that is to say, the issue of, or the undertaking of liability under policies of insurance upon the happening of personal accidents whether fatal or not, disease, or sickness ;

(*d*) marine insurance business, that is to say, the issue of, or the undertaking of liability under policies of insurance against the loss of or damage to ships, cargo or freight, by perils of the sea ;

(*e*) miscellaneous insurance business, including—

(i) employers' liability business, that is to say, the issue of or the undertaking of liability under polices insuring employers against liability to pay compensation or damages to workmen in their employment ;

(ii) bond investment business, that is to say, the busines of issuing bonds or endowment certificates by which the company in return for subscriptions payable periodically at intervals of less than six months contracts to pay the bond-holder a sum at a future date such business not being life insurance business as defined in clause (a) of this definition, or sinking fund or capital redemption insurance business ;

(iii) motor vehicle insurance business, that is to say, the business of effecting contracts of insurance against loss of motor vehicles or damage arising out of use or in connection with the use of motor vehicles, including third party risks ; and

(iv) aircraft insurance business, that is to say, the business of effecting contracts of insurance for the purpose of insuring owners or heirs of any aircraft against loss of, or damage to or arising out of or in connection with the use of the aircraft, including third party risks .

(10) "Insurance Company" means any insurer being a company association or partnership which may be wound up under the Travancore Companies Regulation (IX of 1114) or to which the Travancore Partnership Regulation applies ;

(11) "Insurer" means—

(a) an insurer domiciled in Travancore, that is to say, an individual or unincorporate body of individuals domiciled in Travancore and carrying on insurance business in Travancore or having in Travancore the principal office or place for the conduct of such business;

(b) an insurer established in Travancore, that is to say, an individual or unincorporate body of individuals not domiciled in Travancore or a foreign insurance company carrying on insurance business in Travancore or having in Travancore the principal office or place for the conduct of such business;

(c) a local insurance company, that is to say, any body corporate carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in Travancore or stands to any such body corporate in the relation of a subsidiary company as defined in sub-section (2) of Section 2 of the Travancore Companies Regulation IX of 1114;

(d) an underwriter's agent, that is to say, any person who in Travancore has a standing contract with underwriters' who are members of the society of Lloyds whereby such person is authorised within the terms of such contract to issue protection notes, cover notes or other documents granting insurance cover to others on behalf of the underwriters;

But does not include an insurance agent or a provident society to which the provisions of Part III apply.

(12) "manager" and "officer" have the meaning assigned to those expressions in clauses (8) and (11) respectively of Section 2 of the Travancore Companies Regulation, IX of 1114;

(13) "Managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called;

(14) "policy-holder" includes the person who is the absolute assignee of the benefits under the policy;

(15) "prescribed" means prescribed by rules made under this Regulation; and

(16) "Registrar" means any person who may be appointed by Our Government to perform the duties of the Registrar under this Regulation.

PART II.

Provisions' applicable to Insurers.

3. (1) No individual or unincorporate body of individuals or body corporate shall, after the commencement of this Regulation begin to carry on any class of insurance business in Travancore, and no insurer carrying on any class of insurance business in Travancore shall, after the expiry of three months from the commencement of this Regulation continue to carry on any such business, unless such individual, body, company or insurer has been registered under this Regulation and has obtained from the Registrar a certificate of registration.

Registration.

Explanation.—A local insurance company which carries on any insurance business in any country other than Travancore; a foreign insurance company which has any branch or office of any kind in Travancore or employs any agent or servant for the purpose of canvassing, soliciting or procuring insurance business or collecting insurance premia in Travancore; and any insurer who notwithstanding that he has ceased to issue policies or to undertake liabilites under policies in Travancore has to meet any unsettled claim or to discharge any liability under a paid up policy in Travancore, shall for purposes of this Section be deemed to carrying on insurance business in Travancore.

(2) Every application for registration shall be accompanied by the following:—

(*a*) (i) in the case of a company incorporated under the Travancore Companies Regulation IX of 1114 or under the Travancore Companies Regulation, 1092, a copy of the Memorandum and Articles of Association; or

(ii) in the case of a foreign insurance company, or an insurer or intending insurer having his domicile or principal office or place of business outside Travancore, the documents specified in Clause (*a*) of Section 63; or

(iii) in the case of any other insurer or intending insurer, a certified copy of any agreement, deed or other instrument under which the insurance business of such insurer or intending insurer was constitutsd or established; and

(*b*) a statement setting out:—

(i) in the case of a company incorporated under the Travancore Companies Regulation IX of 1114, or under the Travancore Companies Regulation 1092, the name and address and the occupation, if any, of each of the directors of the company:

(ii) in the case of an insurer or intending insurer domiciled in Travancore the name and address of the proprietor of the insurance business where such insurer or intending insurer in an individual or of each

of the partners or members where the insurer or intending insurer is an unincorporate body and the name and address of the manager of the business in Travancore; or

(iii) in the case of any other insurer or intending insurer, the address of the principal office or place of business of such insurer or intending insurer in Travancore and the full name and address of each of the directors where such insurer or intending insurer is a company of each of the partners where such insurer or intending insurer is an unincorporate body or of the proprietor where such insurer or intending insurer is an individual and the name and address of the manager of the business in Travancore and of one or more persons resident in Travancore and authorised to accept any notice required to be served on the insurer or intending insurer; and

(c) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by Section 7 or Section 98 before application for registration is made has been deposited together with a certificate from Our Accountant-General showing the amount deposited; and

(d) where the provisions of Section 6 or Section 97 apply, a declaration made by the principal officer of the insurer or intending insurer authorised in that behalf and verified by affidavit that the provisions of those sections as to working capital have been complied with.

(e) in the case of an insurer or intending insurer having his principal place of business or domicile outside Travancore a statement made by the principal officer of the insurer or intending insurer athorised in that behalf, verified by affidavit and setting forth the conditions or requirements (if any) not applicable to inhabitants of the country in which such insurers or intending insurers is domiciled or constituted or incorporated, which are imposed by the laws or practice of that country upon inhabitants of Travancore commencing or carrying on insurance business in that country; and

(f) a certified copy of the published prospectus, if any, and of each of the standard policy forms used or to be used by the insurer or intending insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies and where life insurance business is or is to be carried on a certificate by an actuary that such rates, advantages, terms and conditions so far as they relate to such life insurance business are workable and sound:

Provided that in the case of marine accident and miscellaneous insurance business other than employers' liability and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available; and

(g) the fee for registration at such rate not exceeding one hundred rupees for each class of business as may be prescribed.

(3) The Registrar shall, on being satisfied that the insurer or intending insurer has fullfilled all the requirements of the Regulation applicabe to him, register the insurer or intending insurer and issue to him a certificate of registration.

(4) In the case of any insurer or intending insurer having his domicile or principal place of business outside Travancore, the Registrar shall withhold registration or shall cancel a registration already made, if he is satisfied—

(*a*) that in the country in which such insurer or intending insurer has his principal place of business or domicile, inhabitants of Travancore are debarred by the law or practice of the country relating to or applied to insurance from carrying on the business of insurance ; or

(*b*) that any requirement imposed on such insurer or intending insurer under the provisions of Section 62 has not been complied with by him.

(5) The Registrar shall cancel the registration already made of any insurer who fails after registration under this Regulation to comply with the provisions of Section 7 or Section 98 as to deposit.

(6) When the Registrar decides to withhold or to cancel any registration under sub-section (4) or sub-section (5), he shall send written notice of his decision to the insurer by registred Anchal or Post and the decision shall take effect on the date specified in that behalf by the Registrar in the notice, such date not being less than one month nor more than two months from the date on which the notice may in the ordinary course of transmission by Anchal or Post be deemed to have been received by the insurer.

Minimum limits for annuities and other benefits secured by policies of insurauce.

4. (1) No insurer, other than a Co-operative Life Assurance Society or a Mutual Insurance Company to which Part IV of this Regulation applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of this Regulation an annuity of fifty rupees or less or a gross sum of rupees five hundred or less exclusive of any profit or bonus, provided that this shall not prevent an insurer from converting any policy into a paid up policy of any value or the payment of a surrender value of any amount.

(2) Nothing contained in this section shall apply to group policies, that is to say, policies in respect of a group of persons engaged in the same occupation or kindred occupations under a single employer for an aggregate sum of not less than rupees five thousand, under which an insurer pays or undertakes to pay a gross sum of rupees five hundred or less on an individual life

Restriction on name of insurer.

5. (1) An insurer shall not be registered under a name identical with the name under which any other insurer in existence is already registered, or likely by reason of its resemblance to that name to mislead or

deceive the public as to the identity of the insurer unless steps or proceedings for the dissolution such other insurer have been commenced and such other insurer signified to the Registrar his consent to the registration of the first mentioned insurer under that name.

(2) If, through inadvertance or otherwise, an insurer is without such consent as aforesaid registered under a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or which is likely by reason of its resemblance to that name to mislead or deceive the public as to the identity of the insurer, the first-mentioned insurer shall, if called upon to do so by the Registrar on the application of such other insurer, change his name within a time to be fixed by the Registrar:

Provided that nothing in this section shall apply to any insurer carrying on business before the commencement of this Regulation, under the Travancore Life Assurance Companies Regulation, 1112.

(3) No insurer who begins to carry on any insurance business after the commencement of this Regulation shall adopt as its name and no insurer carrying on insurance business before the commencement of this Regulation shall continue after the expiry of one year from the commencement thereof to use as its name any combination of words which includes the word "provident".

Requirements as to capitals.

6. No individual or unincorporate body or company intending to commence life insurance business in Travancore whether solely or in common with any other business, after the commencement of this Regulation shall be registered unless the Registrar is satisfied, that such individual or body or company has as working capital a net sum of not less than fifty thousand rupees exclusive of the deposit to be made before registration under sub-section (5) of Section 7 of this Regulation, and exclusive in the case of a company of any sums payable as preliminary expenses incurred in the formation of the company.

7. (1) Every insurer or intending insurer shall, in respect of the insurance business carried on or to be carried on by him in Travancore, deposit and keep deposited with Our Accountant-General for and on behalf of Our Government cash or approved securities estimated at the market value of the securities on the day of deposit, of the amount hereafter specified, namely:—

(*a*) where the business is life insurance only, two hundred thousand rupees;

(*b*) where the business is fire insurance only, one hundred and fifty thousand rupees;

(*c*) where the business is marine insurance only, one hundred and fifty thousand rupees;

(*d*) where the business is accident and miscellaneous insurance (including employers' liability insurance, aircraft insurance, bond investment insurance and motor vehicle insurance), one hundred and fifty thousand rupees;

(*e*) where the business is life insurance together with any one of the three classes of insurance specified in clauses (*b*),(*c*) and (*d*), three hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;

(*f*) where the business is life insurance together with any two of the three classes of insurance specified in clauses (*b*), (*c*) and (*d*) four hundred thousand rupees of which two hundred thousand rupees shall be the deposit for the life insurance business;

(*g*) where the business is life insurance together with all three classes of insurance specified in clauses (*b*), (*c*) and (*d*), four hundred and fifty thousand rupees of which two hundred thousand rupees shall be the deposit for the life insurance business;

(*h*) where the business does not include life insurance, but includes any two of the classes specified in clauses (*b*), (*c*) and (*d*), two hundred and fifty thousand rupees;

(*i*) where the business does not include life insurance, but includes all three classes specified in clauses (*b*), (*c*) and (*d*), three hundred and fifty thousand rupees; and

(*j*) where the business is marine insurance relating only to vessels engaged in the coastwise trade or their cargo, ten thousand rupees only:

Provided that where the insurer is an underwriter's agent, such insurer shall be deemed to have complied with the provisions of this section as to the deposit, if in respect of the class or classes of insurance business transacted by him in Travancore under the standing contract entered into by him with the underwriter or underwriters for whom he acts as agent an amount equal to one and one-half times the amount of the deposit specified for such class or classes of business in sub section (1) has been deposited and is kept deposited in the manner aforesaid by or on behalf of such underwriter or underwriters.

(2) In the case of an insurer domiciled; constituted or incorporated in Travancore or British India or the United Kingdom and carrying on any class of insurance business in Travancore before the commencement of this Regulation, the deposit referred to in sub section (1) may be made in not more than seven instalments as follows:

(*a*) The first instalment shall be not less than one-fourth of the specified amount of the deposit and shall be paid before the application for registration is made;

(*b*) The second instalment shall be not less than one-sixth of the balance of the specified amount and shall be deposited within one year after the commencement of this Regulation; and

(*c*) The subsequent instalments shall be not less than the minimum required as the second instalment and shall be deposited before the first day of January of each succeeding year:

Provided that in the case of insurers carrying on life insurance business only, the deposit may be made in not more than ten instalments, as follows:

(i) The first instalment shall be not less than one-fourth of the specified amount and shall be deposited before the application for registration is made;

(ii) Second instalment shall be not less than one-ninth of the balance of such amount and shall be deposited within one year after the date of the commencement of this Regulation; and

(iii) The subsequent instalments shall be not less than the minimum required as the second instalment and shall be deposited before the first day of January of each succeeding year.

(3) In the case of an individual or an unincorporate body or company, domiciled, constituted or incorporated as the case may be in any country other than Travancore, British India or the United Kingdom and carrying on any insurance business in Travancore before the commencement of this Regulation, the deposit required by sub-section (1) may be made in two instalments as follows:

(a) The first instalment shall be not less than one-half of the specified amount and shall be deposited before the application for registration is made; and

(b) The second instalment shall be deposited before the expiry of one year from the date of registration.

(4) In the case of an individual or an unincorporate body or a company domiciled, constituted or incorporated as the case may be in Travancore, British India, or the United Kingdom and intending to commence any class of insurance business in Travancore after the commencement of this Regulation, the deposit required by sub-section (1) may be made in instalments as follows:—

(a) the first instalment shall be of not loss than one-fourth of the specified amount and shall be deposited before the application for registration is made;

(b) the second instalment shall be not less than one-third of the balance of such amount and shall be deposited before the expiry of one year from the commencement of business in Travancore;

(c) the third instalment shall be not less than one-half the balance of the amount outstanding thereafter and shall be deposited before the expiry of two years from the commencement of business in Travancore; and

(d) the entire balance then outstanding shall be deposited before the expiry of three years from the commencement of business in Travancore.

(5) In the case of an individual or an unincorporate body or a company domiciled, constituted or incorporated as the case may be in any country other than Travancore, British India, or the United Kingdom and intending to commence any class of insurance business in Travancore after the date of the commencement of this Regulation, the deposit required by sub-section (i) shall be made in full before the application for registration is made.

(6) No insurer who is liable under this section to deposit any instalment or part of the specified amount in repect of any class or classes of insurance business, shall undertake any other class of insurance business until such instalment or part of the specified amount has been deposited in full and the additional deposit required by sub-section (1) in respect of such other class of business or to much of that deposit as is required by any of the provisions of sub-sections (2), (3) and (4) to be made before the application for registration, has also been made in full.

(7) Securities already deposited with Our Accountant-General in compliance with the Travancore Life Assurance Companies Regulation, shall, to the extent of their market value on the day of the first deposit made in compliance with the Regulation be deemed to be deposited under this Regulation in respect of the Life Insurance business of the insurer.

(8) A deposit made in cash shall be invested by Our Accountant-General and shall carry interest at rates sanctioned by our Government from time to time on such deposits and shall be returnable to the insreur in cash in any case in which under the provisions of this Regulation a deposit is to be returned; and any interest accruing due and collected on such deposits and on securities deposited under this section shall be paid to the insurer, subject in the case of securities only to deduction of the normal commission chargeable for the realisation of interest.

(9) An insurer may at any time substitute for securities lodged with Our Accountant-General under this section other approved securities of equal value at the market rate prevailing at the time of substitution, and Our Government shall, if so required by a depositer, invest in securities the whole or any part of a deposit made originally in cash or the whole or any part of cash received by the Accountant-General on sale of or on the maturing of securities lodged by the depositor.

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities as will make up the amount to used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (1), unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is to used for discharge of liabilities.

Reservation of deposits.

8. (I) The deposit made by an insurer under Section 7 shall be deemed to be part of the asssts of the insurer but shall not be susceptible of any assignment or charge; nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilities remain undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way.

(2) Where a deposit is made in respect of life insurance business the deposit made in respect thereof shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer.

9. Where an insurer has ceased to carry on in Travancore any class of insurance business in respect of which a deposit has been made under Section 7 and his liabilities in Travancore in respect of business of that class have been satisfied or are otherwise provided for, the court may, on the application of the insurer order the return to the insurer of so much of the deposit as may not be required under Section 7 for the purpose of any other class of insurance, which he may continue to carry on thereafter.

Refund of deposits.

10. (1) Where an insurer carries on business of more than one of the classes specified in classes (*a*), (*b*), (*c*) and (*d*) of sub-section (1) of Section 7, he thall keep a separate account of all receipts and payments in respect of each such class of insurance business.

Separation of accounts and funds.

(2) In the case of every insurer who carries on the business of life insurance whether solely or in addition to any other business, the excess of receipts over payments in respect of the life insurance business shall be carried to and shall form a separate fund to be called the life insurance fund and the deposit made by the insurer under Section 7 in respect of such life insurance business shall be deemed to be part of such fund.

(3) The life insurance fund shall be as absolutely the security of the holder of life policies issued by the insurer of life policies issued by the insurer as though it belonged to an insurer carrying on no other business than life insurance business and shall not be liable for any contracts of the insurer for which it would not have been liable had the business of the insurer been only that of life insurance and shall not be applied directly or indirectly save as provided in Section 49 for any purposes other than those of the life insurance business carried on by that insurer.

11. (1) Every insurer domiciled or established or incorprated in Travancore in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in Travancore shall at the expiration of each calendar year prepare with reference to that year.

Accounts and balance sheets.

(*a*) in accordance with the regulations contained in Part I of the first Schedule a balance sheet in the form set forth in Part II of that Schedule;

(*b*) in accordance with the regulations contained in Part I of the second Schedule, a profit and loss account and a profit and loss appropriation account in the forms set forth in Part II of the Schedulee,

except where the insurer carried on business of one class only of the classes specified in clauses (*a*), (*b*) and (*c*) of sub-section (1) or Section 7 and no other business.

(*c*) in respect of each class of insurance business carried on by him in accordance with the regulations contained in Part I of the Third Schedule a revenue account in the form or forms set forth in Part II of that Schedule applicable to that class of insurance business.

(2) The accounts and statements referred to in sub-section (1) shall be signed—

(*a*) in the case of a company to which the Travancore Companies Regulation IX of 1114, applies, by the officers or persons required by that Regulation to sign accounts and statements:

(*b*) in the case of any other company by the chairman, if any, and two directors and the principal officer of the company in Travancore;

(*c*) in the case of an unincorporated body of two partners or members of such body; and

(*d*) in the case of an individual, by that individual or the person managing the business in Travancore on his behalfs;

And shall be accompanied by a statement containing the name and descriptions of each of the persons in charge of the management of the business during the period to which such accounts and statements relate and by a report by such persons on the affairs of the business during that period.

(3) Where an insurer carrying on the business of insurance at the commencement of this Regulation has prepared the balance-sheet and accounts required by the Travancore Companies Regulation IX of 1114, of has based his acounts upon the financial and not the calendar year, the provisions of this section shall, if Our Government so directs in any case, apply until the 31st day of December of the year succeeding the year in which the Regulation comes into force, as if in sub-section (1) references to the calender year were references to the financial year.

12. The balance-sheet, profit and loss account, revenue account and profit and loss appropriation account prepared by each insurer under Section 11 shall, unless they are subject to audit under the Travancore Companies Regulation, IX of 1114, be audited annually by an auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by Section 183 of the Travancore Companies Regulation, IX of 1114.

Actuarial report and abstract.

13. (1) Every insurer domiciled, established or incorporated in Travancore shall, in respect of all life insurance business transacted by him, and every other insurer shall in respect of the life insurance business transacted by him in Travancore once at least in every five years cause an investigation to be made by an actuary into the financial condition of the life

insurance business including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule.

(2) The provisions of sub-section (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the destribution of profits or an investigation is made of which the results are made public.

(3) There shall be appended to every such abstract as is referred to in sub-section (1) or sub-section (2) a certificate signed by the insurer or a partner or the principal officer of the insurer as the case may be that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(4) There shall be appended to every such abstract a statement in conformity with the requirements of Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule, of the life insurance business subsisting at the date of which the accounts of the insurer are made up for the purpose of such abstract :

Provided that, if the investigation referred to in sub-sections (1) and (2) is caused to be made annually by any insure, it shall be a sufficient compliance with the requirements of this sub-section if such statement is appended once at least in every five years.

(5) Where an investigation into the financial condition of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance-sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by this Regulation.

Register of policies and register of claims.

14. Every insurer, domiciled, established or incorporated in Travancore in respect of all business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in Travancere shall keep and maintain—

(*a*) a register or record of policies, in which shall be entered in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and particulars of any transfer, assignment or nomination of which the insurer has notice, and

(*b*) a register or record of claims in which shall be entered every claim presented to the insurer together with the date of the claim the name and address of the claimant and the date on which the claim was discharged or, in the case of a claim which is rejected the date of rejection and the grounds therefor.

15. (1) Every insurer shall cause to be printed the audited accounts and statements required by Section II and the abstract and statement required by Section 13 and shall furnish four copies thereof as returns to the Registrar within six months from the end of the period to which they relate :

Submission of returns.

Provided that the Registrar may extend the period allowed for furnishing printed copies of the abstract and statements referred to in Section 13 by a period not exceeding three months :

Provided further that in the case of insurers having their principal place of business or domicile outside Travancore and in the case of insurers domiciled, established or incorporated in Travancore] but also carrying on business outside Travancore the period allowed for furnishing such printed returns shall be nine months:

And provided also that Our Government may in any case extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months.

(2) Of the four copies so furnished one shall signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm by two partners of the firm, and, in the case of an insurer being an individual, by the insurer himself.

(3) Where the insurer's principal place of business or domicile is outside Travancore, he shall forward to the Registrar along with the documents referred to in Section II, the balance-sheet profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled, or, where such documents are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period.

16. (1) Where by the law of any country outside Travancore in which an insurer, is domiciled or constituted or incorporated, the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents require to be furnished as returns in accordance with the provisions of Section 15, the provisions of sub-section (2) of this section shall apply to such insurer in lieu of the provisions of Sections 11, 12, 13 and 15.

Returns by insurers established outside Travancore.

(2) Every insurer referred to in sub-section (1) shall within the time allowed by or under Section 15, furnish to the registrar four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (2) of this section, and in addition thereto, four copies in the English language of each of the following statements, namely :

(a) a statement showing the assets held by the insurer in Travancore

(b) for each class of insurance business carried on by him, a revenue account in the form or forms set forth in Part II of the third Schedule as may be applicable to that class of business showing separately with respect to business transacted by the insurer in Travancore, the details required to be supplied in such revenue account :

(c) an abstract of the valuation report in respect of all life insurance business transacted by the insurer in Travancore prepared in the manner required by sub-section (1) of Section 13; and

(d) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly whether from this principal office or from any other source outside Travancore have been shown in the revenue account except such sums as properly appertain to the capital account.

Exemption from certain provisions of the Travancore Companies Regulation 1114.

17. Where a local insurance company in any year furnishes the accounts and balance-sheet in accordance with the provisions of Section 15, the company may at the same time send to the Registrar of Companies a copy of such accounts and balance-sheet; and where such copy is so sent it shall not be necessary for the company to file a balance-sheet with the Registrar as required by sub-section (1) of Section 170 of that Regulation and the copy of the accounts and balance-sheet so sent shall be dealt with in all respects as if they were filed in accordance with that section.

Furnishing reports

18. Every insurer shall furnish to the Registrar a certified copy of every report on the affairs of the concern which is submitted to the members, partners or policy-holders of the insurer immediately after it is so submitted.

Abstract of proceedings of general meetings.

19. Every local insurance company shall furnish to the Registrar an abstract of the proceedings of every general meeting within thirty days from the date of that meeting.

Custody and inspection of documents and supply of copies.

20. (1) Every return furnished to the Registrar or a certified copy thereof shall kept by the Registrar and shall be open to inspection; and any person may procure a copy of any such return or of any part thereof, on payment of a fee of six as. for every hundred words or fractional part thereof required to be copies, any five figures being deemed for this purpose to be equivalent to one word.

(2) A printed or certified copy of the accounts, statements and abstrant furnished in accordance with the provisions of Section 15 or Section 16 shall on the application of any share holder or policy-holder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is, constituted, incorporated or domiciled in Travancore and in any other case within one month of such application.

(3) A copy of the Memorandum and Articles of Association of the insurer if a company shall on the application of any policy-holder be supplied to him by the insurer on payment of one rupee.

Powers of Registrar regarding returns.

21. (1) If it appears to the Registrar that any return furnished to him under the provisions of this Regulation is inaccurate or defective in any respect ; he may—

(*a*) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return ; or

(*b*) call upon the insurer to submit for his examination at the principal place of business of the insurer in Travancore any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose ; or

(*c*) examine any officer of the insurer on oath in relation to the return ; or

(*d*) decline to accept any such return unless the inaccuracy has been corrected or the defect has been remedied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or the remedying of the defect was delivered to the insurer and if the Registrar declines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 as the case may be relating to the furnishing of returns.

(2) The Court may on the application of an insurer and after hearing the Registrar cancel any order made by the Registrar under clause (*a*), (*b*) or (*c*) of subsection (1) or may direct the acceptance of any return which the Registrar has declined to accept, if the insurer satisfies the Court that the action of the Registrar was in the circumstances unreasonable.

Power of Registrar to order revaluation.

22. If it appears to the Registrar that an investigation or valuation made under section 13 does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, he may after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation to be made at the expense of the insurer by an actuary appointed by the insurer for that purpose and approved by the Registrar.

23. (1) Every return furnished to the Registrar which has been certified by the Registrar to be a return so furnished, shall be deemed to be a return duly furnished to him.

Evidence of documents.

(2) Every document, purporting to be certified by the Registrar to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.

24. Our Government shall cause to be published in each year in such manner as they may direct, a summary of the accounts, balance-sheets, statements, abstracts and other returns furnished or purporting to be furnished under this Regulation to the Registrar for the year preceding the year of publication and may append to such summary any note of Our Government and any correspondence in relation thereto.

Summery of return to be published.

Returns to be published in statutory forms.

25. No insurer shall publish in Travancore any return in a form other than that in which it has been furnished to the Registrar:

Provided that nothing contained in this section shall prevent an insurer from publishing a true and accurate abstract from such returns for the purposes of publicity.

26. Whenever any alteration occurs or is made which affects any of the documents or particulars which under the provisions of sub-section (2) of section 3 accompanied or were required to accompany the application, of any insurer for registration, the insurer shall forthwith furnish to the Registrar a full statement of such alteration.

Altorations in the particulars furnished with application for registration to be reported.

Investment, Loans and Management.

27. (1) Every insurer domiciled, constituted or incorporated in Travancore and carrying on life insurance business in Travancore shall, subject to the provisions of subsection (4), at all times invest and hold invested assets equivalent to not less than fiftyfive per cent. of the sum of the amount of his liabilities to holders of life insurance policies in Travancore on account of matured claims and of the amount required to meet the liability on policies of life insurance maturing for payment in Travancore less the amount of any deposit made under Section 7 by the insurer in respect of his life insurance business and less any amount due to the insurer for loans granted by him on policies of life insurance and the investment shall be made by the insurer in the manner following namely twenty five per cent of the said sum in Government securities and a further sum equal to not less than thirty per cent. of the said sum in Government securities or other approved securities.

Investment of assets and restriction on loans.

(2) The provisions of sub-section (1) shall apply also to insurers incorporated or domiciled in British India or the United Kingdom and carriying on life insurance business in Travancore.

(3) An insurer incorporated or domiciled elsewhere than in Travancore or British India or the United Kingdom and carrying on life insurance business in Travancore shall, subject to the provisions of sub-section (4), at all times invest and hold invested assets equivalent to not less than the sum of his liabilities to holders of life insurance policies in Travancore on account of matured claims and the amount required to meet the liabilities on policies of life insurance maturing for payment in Travancore, less the amount of any deposit made under section 7 by the insurer in respect of his life insurance business and less any amount due to the insurer on loans granted by him on policies of life insurance in the manner following, namely thirty-three and one-third per cent. of the said sum in Government securities, the balance in Government securities or other approved securities.

(4) Every insurer carrying on life insurance business in Travancore at the commencement of this Regulation and to whom any of the provisions of sub-section (1) or sub-section (2) or sub-section (3) apply shall before the expiry of four years from the commencement of this Regulation invest the total amount required to be invested by those sub-sections in the manner required thereby:

Provided that of such total amount the insurer shall have invested not less than one-fourth in securities of the nature specified in the aforesaid provision before the expiry of one year, not less than one-half before the expiry of two years, and not less than three-fourths before the expiry of three years from the commencement of this Regulation.

(5) The assets required by this section to be held invested by an insurer to whom sub-section (3) applies shall be held in trust for the discharge of claims of the nature referred to in sub-section (3) and shall be vested in trustees resident in Travancore and approved by Our Government by an instrument of trust which shall be executed by the insurer and approved by Our Government and shall define the manner in whch alone the subject-matter of the trust shall be dealt with.

Statement of investments of assets.

28. (1) Every insurer registered under this Regulation and carrying on the business of life insurance, shall twice in every year, namely, within fourteen days of the 30th day of June and within fourteen days of the 31st day of December, submit to the Registrar a statement showing as at the said datest he assets held invested in accordance with section 27 and such statement shall be certified by the insurer or the principal officer in charge of the business of the insurer in Travancore.

(2) The Registrar shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets invested in compliance with section 27 and the insurer shall comply with all requisitions made by the Registrar in that behalf.

29. No insurer shall grant loans or temperory advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value to any director, manager, managing agent actuary, auditor or officer of the insurer if a company, or where the insurer is a firm, to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent, actuary, officer or partner :

Prohibition of loans.

Provided that nothing herein contained shall apply to loans made by an insurer to a banking company ;

Provided further that every existing loan to any director, manager, managing agent, auditor, actuary, officer or partner, notwithstanding any contract to the contrary, shall be repaid within one year from the commencement of this Regulation, and in case of default, such defaulting director, manager, managing agent, auditor, actuary, officer or partner shall cease to hold office on the expiry of one year from the commencement of this Regulation.

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company.

30. If, by reason of a contravention of any of the provisions of section 27 or section 29, any loss is sustained by the insurer or by the policy-holders, every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Regulation, be jointly and severally liable to make good the amount of such loss.

31. None of the assets in Travancore of any insurer shall, except in the case of deposits made with the Accountant General under section 7 or in so far as assets are required to be vested in trustees by sub-section (5) of section 27, be kept otherwise than in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual.

32. (1) No insurer shall, after the commencement of this Regulation, appoint a managing agent for the conduct of his business.

Limitation on employment of managing agents and on the remuneration payable to them.

(2) Where any insurer engaged in the business of insurance before the commencement of this Regulation employs a managing agent for the conduct of his business, then, notwithstanding anything to the contrary contained in any agreement entered into by the insurer and where the insurer is a company, notwithstanding anything to the contrary contained in the Travancore Companies Regulation, IX of 1114,

or in the articles of association of that company, such managing agent shall cease to hold office on the expiry of three years from the commencement of this Regulation, and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent.

(3) After the commencement of this Regulation, notwithstanding anything to the contrary contained in any agreement entered into by an insurer and where the insurer is a company notwithstanding anything to the contrary contained in the Travancore Companies Regulation, IX of 1114 or in the articles of association of the company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousand rupees per month in all, including salary and commission and other remuneration payable to and receivable by him, for his services as managing agent.

Inspection.

Power of Registrar to order inspection.

33. (1) If the Registrar has reason to believe that the interests of the policy-holders of an insurer are in danger or that an insurer is unable to meet his obligations or has made default in complying with any of the provisions of this Regulation, or that an offence under this Regulation has been or is likely to be committed by an insurer or any officer of an insurer, or if he receives a requisition in this behalf signed by shareholders of an insurer, being a company not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or if he receives a requisition in this behalf signed by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and or of the total value of not less than fifty thousand rupees and supported by an affidavit, he may after giving notice to the insurer and giving him an opportunity to be heard, appoint an auditor or actuary or both, not being an auditor or acturer in the employ of the insurer, or may himself make such investigation.

(2) The Court may, on the application of an insurer and after giving notice to and hearing the Registrar, forbid such action by the Registrar, if the insurer satisfies the Court that it is unnecessary in the circumstances.

(3) The results of any investigation made under this section shall be embodied in a report of which one copy shall be lodged with the Registrar and one copy shall be furnished to the insurer and a copy of such report shall be furnished to any policy-holders who have sent a requisition for such investigation.

(4) The Registrar may require the insurer to comply within a time to be specified by him (not being less than fifteen days from the receipt of the notice by the insurer) with any directions he may issue to remedy defects disclosed by such inspection.

(5) If as a result of any investigation made under this section, the Registrar is of opinion that it is necessary in the interests of the policy-holders that the business of the insurer should be wound up, or if the insurer fails to comply with any directions issued under sub-section (4), the Registrar may, after giving notice to the insurer and giving him an opportunity, to be heard, apply to the Court to have the business of the insurer wound up.

Powers of Investigator.

34. When any investigation is made in pursuance of section 33 the provisions of section 177 of the Travancore Companies Regulation, IX of 1114 shall apply for the purposes of such investigation as they apply to an investigation made in pursuance of section 175 of that Regulation, and all expenses of and incidental to such investigation shall be defrayed by the insurer.

Amalgamation and Transfer of Insurance Business.

Amalgamation and transfer of insurance business.

35. (1) No life insurance business of an insurer domiciled or established or incorporated in Travancore shall be transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and sanctioned by the Court having jurisdiction over one or other of the insurers concerned.

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Court to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor shall, at least two months before the application is made, be sent to Our Government and certified copies of the following documents shall be furnished to Our Government and shall during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch offices and chief agencies of the insurer concerned, namely:—

(a) a draft of the agreement or deed under which it is proposed to effect the amalgamation of transfer;

(b) statements of the assets and liabilities of the insurers concerned in such amalgation or transfer; and

(c) the actuarial or other reports on which the scheme was founded including a report by an independent actuary on the proposed amalgamation or transfer.

(4) Where an application under sub-section (3) is made to the Court within three months from the commencement of this Regulation, the Court may, on application, extend for the insurer whose business is to be transferred to or amalgamated with the business of another insurer, the time allowed for registration and for the payment of first instalment of the deposit under sections 3 and 7 for such period not exceeding 9 months as the Court may think fit.

Sanction of amalgamation and transfer by Court.

36. When any application such as is referred to in sub-section (3) of section 35 is made to the Court, the Court shall cause if for special reasons it so directs, notice of the application to be sent to every person resident in Travancore who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer as the case may be, to be published in such manner and for such period as it may direct and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom it considers entitled to be heard, may sanction the arrangement, if it is satisfied that no sufficient objection to the arrangement has been established.—

Statements required after amalgamation and transfer.

37. Where an amalgamation takes place between any two or more insurers, or where any business of one insurer is transferred to another, the insurer carrying on the amalgamated business or the insurer to whom the business is transferred, as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer furnish to Our Government.

(*a*) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected, and

(*b*) a declaration signed by every insurer concerned or in the case of a company by the chairman and the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer, and

(*c*) where the amalgamation or transfer has not been made in accordance with a scheme confirmed by the Court :—

(i) certified copies of statements of the assets and liabilities of the insurers concerned, and

(ii) certified copies of the acturial or other reports upon which the agreement or deed was founded.

Assignment or Transfer of Policies and Nominations.

Assignment and transfer of life insurance policies.

38. (1) A transfer or assignment of a policy of life insurance whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but shall not be operative as against an insurer and shall not confer upon the transferee or assignee or his legal representative, any right to sue

for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment has been delivered to the insurer at his principal place of business in Travancore by or on behalf of the transferor or transferee.

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee of assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgment of the receipt of such notice; and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(5) From the date of the receipt of the notice referred to in sub-section (2) the insurer shall recognise the transferee of assignee named in the notice as the only person entitled to benefit under the policy and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

(6) The rights and remedies of the assignee or transferee of a policy of life insurance existing prior to the commencement of this Regulation shall not be affected by the provisions of this section.

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the life of the policy-holder, and an assignment in favour of the survivor or survivors of a number of persons, shall be valid.

Nomination by policy holder.

39. (1) The holder of a policy of life insurance may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be.

(3) The insurer may charge a fee not exceeding one rupee for registering any such endorsement and shall furnish to the policy-holder a written acknowledgment of having done so.

(4) A transfer or assignment of a policy made in accordance with section 38 shall, automatically cancel a nomination.

(5) Where the policy matures for payment during the lifetime of the policy-holder or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives of the holder of a succession certifiate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the policy-holder, the amount secured by the policy shall be payable to such survivor or survivors.

Commission and Rebates and Licensing of Agents.

Prohibition of payment by way of commission or otherwise for procuring business.

40. (1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in Travancore to any person except an insurance agent licensed under section 42 or a person acting on behalf of an insurer who for the purposes of insurance business employs licensed insurance agents.

(2) No insurance agent licensed under section 42 shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium or, in the case of business of any other class, fifteen per cent. of the premium;

Provided that an insurer may, in respect of life insurance business only, pay to insurance agents during the first ten years of his business fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums.

(3) Nothing in this section shall prevent the payment under any contract existing prior to the date of commencement of this Act of gratuities or renewal commission to an insurance agent or to his representative after his decease in respect of insurance business effected through him before the said date.

Prohibition of rebates.

41. (1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to effect or renew an insurance in respect of any kind of risk relating to lives or property in Travancore, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or tables of the insurer.

(2) Any person contravening the provisions or this section shall be punishable with fine which may extend to one hundred rupees, unless the default is made by a person effecting or renewing a policy, in which case he shall be punishable with fine which may extend to fifty rupees only.

Licensing of insurance agents.

42. (1) The Registrar or an officer authorised by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee which shall not be more than one rupee, issue to any individual making an application under this section and not suffering from any of the disqualifications hereinafter mentioned a license to act as an insurance agent for the purpose of soliciting or procuring insurance business.

(2) A license issued under this section shall entitle the holder to act as an insurance agent for any registered insurer.

(3) A license issued under this section shall expire on the 31st day of March in each year, but shall, if the applicant does not suffer from any of the disqualifications hereinafter mentioned, be renewed from year to year on payment of a fee of one rupee.

(4) The qualifications above referred to shall be the following:—

(a) that the person is a minor;

(b) that he is found to be of unsound mind by a Court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating by a Court of competent jurisdiction;

(d) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an assured.

(5) If it be found that an insurance agent suffers from any of the foregoing disqualifications, the Registrar shall, and if the agent has knowingly contravened any provision of this Act may, cancel the license issued to the agent under this section without prejudice to any other penalty to which such agent may be liable.

Register of insurance agents.

43. (1) Every insurer and every person who acting on behalf of an insurer employs licensed insurance agents shall maintain a register showing the name and address of every licensed insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

(2) Any individual not holding a license issued under section 42 who acts as an insurance agent shall be punishable with fine which may extend to fifty rupees and any insurer who, or any person acting on behalf of an insurer who, appoints as an insurance agent any individual not so licensed, or transacts any insurance business in Travancore through any such individual, shall be punishable with fine which may extend to one hundred rupees.

(3) The provisions of sub-section (2) shall not take effect until the expiry of six months from the commencement of this Act

44. Notwithstanding anything contained in any contract between any insurer and an insurance agent licensed under section 42 as to the forfeiture of commission on renewal premiums or the cessation of payment of such commission to such insurance agent, no insurer shall in respect of life insurance business done in Travancore refuse payment to an insurance agent of commission on renewal premiums due to him under the agreement by reason only of the termination of his agreement on any ground other than fraud if such agent has served such insurer continually and exclusively for at least ten years, and after his ceasing to act as agent, he does not directly or indirectly solicit or procure insurance business for any other insurer.

Prohibition of cessation of payments of commission.

Special Provisions of Law.

45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of such commencement and no policy of life insurance effected after the commencement of this Act, shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referree or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter and was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false.

Policy not to be called in question on ground of misstatement after two years.

46. The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in Travancore after the commencement of this Act shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, to receive payment in Travancore of any sum secured thereby and to sue for any relief in respect of the policy in any Court of competent jurisdiction in Travancore; and if the suit is brought in Travancore any question of law arising in connection with any such policy shall be determined according to the law in force in Travancore.

Application of Travancore Law to policies issued in Travancore.

47. (1) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount, the insurer shall before the expiry of nine months from the

Payment of money into Court.

date the of maturing of the policy apply to the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise for permission to pay the amount into Court.

(2) A receipt granted by the Court for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount.

(3) An application for permission to make a payment into Court under this section shall be made by a petition verified by an affidavit signed by the insurer or the principal officer of the insurer setting forth the following particulars namely :—

(*a*) the name of the insured person and his address;

(*b*) if the insured person is deceased, the date and place of his death;

(*c*) the nature of the policy and the amount secured by it;

(*d*) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received;

(*e*) the reasons why in the opinion of the insurer a satisfactory discharge cannot be obtained for the payment of the amount; and

(*f*) the address at which the insurer may be served with notice of any proceeding relating to disposal of the amount paid into Court.

(4) An application under this section shall not be entertained by the Court if the application is made before the expiry of six months from the death of the insured, or the maturing of the policy by survival.

(5) If it appears to the Court that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be paid into Court.

(6) The insurer shall transmit to the Court every notice of claim received after the making of the application under sub-section (3) and any payment required by the Court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into Court shall as to the costs of the application under sub-section (3) be borne by the insurer and as to any other costs be in the discretion of the Court.

(7) The Court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into Court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claimant.

(8) The Court shall decide all questions relating to the disposal of claims to the amount paid into Court.

Directors of insurers being companies

48. (1) Where the insurer is a company incorporated under the Travancore Companies Act, IX of 1114, or the Travancore Companies Act, 1092 and carries on the business of life insurance not less than one-fourth of the whole number of the directors of the company shall be persons having the prescribed qualifications and holding policies of life insurance issued by the company, and shall be elected to the Board of Directors of the company in the prescribed manner by the holders of policies of life insurance issued by the company.

(2) This section shall not take effect until the expiry of one year from the commencement of this Act.

49. No insurer, domiciled, established or incorporated in Travancore and carrying on the business of life insurance shall in respect of such life insurance business declare or pay any dividend to share-holders or any bonus to policy-holders except out of a surplus ascertained as the result of an actuarial valuation of the assets and liabilities of the insurer

Notice of options available to the assured on the lapsing of a policy.

50. An insurer shall, within three months of the lapsing of a policy of life insurance, give notice to the policy-holder informing him of the options available to him.

Supply of copies of proposals and medical reports.

51. Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith.

Prohibition of business on dividing principle.

52. No insurer shall after the commencement of this Act begin, or after three years from that date continue to carry on, any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise:

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withhold from distribution a sum of not less than forty per cent. of the premiums received during each year after the commencement of this Act in which such business is continued so as to make up the amount required for investment under Section 27.

Winding up.

Winding up by the Court.

53. (1) The Court may order the winding up in accordance with the Travancore Companies Act IX of 1114, of any insurance company and the provisions of that Act shall, subject to the provisions of this Chapter, apply accordingly.

(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of an insurance company,—

(*a*) if with the sanction of the Court previously obtained a petition in this behalf is presented by share-holders not less in number than one-tenth of the whole body of share-holders and holding not less than one-tenth of the whole share capital or by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or

(*b*) if the Registrar, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely:—

(i) that the Company has failed to deposit or to keep deposited with Our Accountant General the amounts required by Section 7.

(ii) that the Company having failed to comply with any requirement of this Act has continued such failure for a period of three months after notice of such failure has been conveyed to the company by the Registrar.

(iii) that it appears from the returns furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is insolvent, or

(iv) that the continuance of the company is prejudicial to the interests of the policy-holders.

Voluntary winding up.

54. Notwithstanding anything contained in the Travancore Companies Act, IX of 1114, an insurance company shall not be wound up voluntarily except for the purpose of effecting an amalgamation or a reconstruction of the company, or on the ground that by reason of its liabilities it cannot continue its business.

Valuation of liabilities.

55. (1) In the winding up of an insurance company or in the insolvency of any other insurer the value of the assets and the liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator or receiver in insolvency thinks fit, subject so far as applicable, to the rule contained in the Sixth Schedule and to any directions which may be given by the Court.

(2) For the purposes of any reduction by the Court of the amount of the contracts of any insurance company the value of assets and liabilities of the company and all claims in respect of policies issued by it shall be ascertained in such manner and upon such basis as the Court thinks proper having regard to the rule aforesaid.

(3) The rules in the Sixth Schedule shall be of the same force and may be repealed, altered or amended as if it were a rule made in pursuance of Section 304 of the Travancore Companies Act, IX of 1114, and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies.

56. (1) In the winding up of an insurance company and in the insolvency of any other insurer the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life insurance business.

Application of surplus assets of life insurance fund in liquidation or insolvency.

(2) In the winding up of an insurance company carrying on the business of life insurance or insolvency of any other insurer carrying on such business where any other proportion of the profits of the insurer was before the commencement of the winding up or insolvency allocated to policy-holders, if, when the assets and liabilities of the insurer have been ascertained, there is found to be a surplus of assets over liabilities (hereinafter referred to as a *prima facie* surplus) there shall be added to the liabilities of the insurer in respect of the life insurance business an amount equal to such proportion of the *primaffacie* surplus as is equivalent to such proportion of the profits allocated to share-holders and policy-holders as was allocated to policy-holders during the ten years immediately preceding the commencement of the winding up and the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition :

Provided that—

(*a*) if in any case there has been no such allocation or if it appears to the Court that by reason of special circumstances it would be in equitable that the amount to be added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct, and

(*b*) for the purpose of the application of this sub-section to any case where before the commencement of the winding up or insolvency a proportion of such profits as aforesaid of a branch only of the life insurance business in question has been allocated to policy-holders, the value of the assets and liabilities of the insurer in respect of that branch shall be separately ascertained in like manner as the value of his assets and liabilities in respect of the life insurance business was ascertained, and the surplus so found, if any, of assets over liabilities shall, for the purpose of determining the amount to be added to the liabilities of the insurer in respect of the life insurance business deemed to be the *prima facie* surplus.

57. (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against

Winding up of secondary companies

the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary Company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company.

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the secondary company.

(3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company or as near thereto as circumstances admit.

(4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary, the Court shall not direct the secondary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any secondary company in conjunction with the principal company by any creditor of, or person interested in, the principal or secondary company.

(6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.

Scheme for partial winding up for insurance companies

58. (1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act.

(2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities of the company between the classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding up), for any future rights of every class of policy-holders in respect of their policies and for the manner of winding up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.

(3) The provisions of this Act relating to the valuation of liabilities of insurers in liquidation and insolvency and to application surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and any scheme under this section may apply with the necessary modifications any of the provisions of the Travancore Companies Act, IX of 1114, relating to the winding up of companies.

(4) An order of the court confirming a scheme under this section whereby the memorandum of a company is altered with respect to its object shall as respects the alteration have effect as if it were an order confirmed under section 12 of the Travancore Companies Act IX of 1114, and the provisions of sections 15 and 16 of that Act shall apply accordingly.

Return of deposits.

59. In the winding up of an insurance company and in the insolvency of any other insurer the liquidator or assignee as the case may be shall apply to the Court for an order for the return of the deposit made by the company under section 7 and the Court shall on such application order a return of the deposit on such terms and conditions as it shall direct.

Notice of policy values.

60. In the winding up of an insurance company for the purposes of a cash distribution of the assets and in the insolvency of any other insurer the liquidator or assignee as the case may be in the case of all persons appearing by the books of the company or other insurer to be entitled to or interested in the policies granted by the company or other insurer shall ascertain the value of the liability of the company or other insurer to each such person and shall give notice of such value to those persons in such manner as the Court may direct and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in such manner and within such time as may be specified by a rule or order of the Court.

61. (1) Where an insurance company is in liquidation or any other insurer is insolvent the Court may make an order reducing the amount of the insurance contracts of the company or other insurer upon such terms and subject to such conditions as the Court thinks just.

Power of Court to reduce contracts of insurance.

(2) Where a company carrying on the business of life insurance has been proved to be insolvent, the Court may if it thinks fit in place of making a winding up order reduce the amount of the insurance contracts of the company upon such terms and subject to such conditions as the Court thinks fit.

(3) Application for an order under this section may be made either by the liquidator or by or on behalf of the company or by a policy-holder, or by the Registrar and the Registrar and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application.

62. Where by the law or practice of any country outside Travancore in which an insurer carrying on insurance business in Travancore is constituted, incorporated or domiciled, insurance companies incorporated in Travancore are required as a condition of carrying on insurance business in that country to comply with any special requirement whether as to the keeping of deposits or assets in that country or otherwise which is not imposed an insurer of that country under this Act, Our Government may, if satisfied of the existence of such special requirement, by notification in Our Government Gazette direct that the same requirement or requirements as similar thereto as may be shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in Travancore.

Power of Government to impose reciprocal disabilities on foreign companies.

SPECIAL PROVISION RELATING TO EXTERNAL COMPANIES.

63. Every insurer, having his principal place of business or domicile outside Travancore, who establishes a place of business within Travancore, or appoints a representative or other agent in Travancore with the object of obtaining insurance business, shall, within three months from the establishment of such place of business or the appointment of such agent file with the Registrar

Particulars to be filed by insurers established outside Travancore.

(*a*) a certified copy of the charter, statute, deed of settlement or memorandum and articles of association or other instrument constituting or defining the constitution of the insurer, and, if the instrument is not written in the English language, a certified translation thereof.

(*b*) a list of the directors, if the insurer is a company,

(*c*) the name and address of some one or more persons resident in Travancore authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer, together with a copy of the power of attorney granted to him.

(*d*) the full address of the principal office of the insurer in Travancore.

(*e*) a statement of the classes of insurance business to be carried on by the insurer, and

(*f*) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in section 62 imposed in the country of origin of the insurer on inhabitants of Travancore, and in the event of any alteration being made in the address of the principal office or in the classes of business to be carried on, in any instrument here referred to, or in the name of any of the persons here referred to, the company shall forthwith furnish to the Registrar particulars of such alteration.

Book to be kept by insurers established outside Travancore.

64. Every insurer having his principal place of business or domicile outside Travancore shall keep at his principal-office in Travancore such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Registrar in respect of the insurance business transacted by him in Travancore to be complied with, and if necessary, checked by the Registrar.

PART III.

Provident Societies.

Definition of "provident society."

65. In this Part "provident society" means a person who, or a body of persons whether corporate or incorporate which, receives premiums or contributions for securing annuities on human life or receives premiums or contributions for insuring money to be paid on the happening of any of the following contingencies, namely:—

(*a*) the birth, marriage or death of any person or the survival by a person of a stated age or contingency;

(*b*) failure of issue;

(*c*) the occurrence of a social, religious or other ceremonial occasion;

(*d*) loss of or retirement from employment;

(*e*) disablement in consequence of sickness or accident;

(*f*) the necessity of providing for the education of a dependent; and

(*g*) any other contingency which may be prescribed or which may be authorised by Our Government,

Application of this Part.

66. Nothing in this Part shall apply to a provident society which pays or undertakes to pay on any policy of insurance an annuity exceeding fifty rupees or a gross sum exceeding five hundred rupees exclusive of any profit or bonus:

Provided that for the purposes of this section contracts entered into before the commencement of this Act shall not be taken into consideration and provided further that "policy" includes a series of policies covering one or more of the contingencies specified in Section 65.

67. No provident society established after the commencement of this Act shall adopt as its name, and no provident society established before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name, any combination of words which fails to include the word "provident" or which includes the word "life."

Name.

68. No provident society shall receive any premium or contribution for insuring money to be paid to any person other than the person paying such premium or contribution or the wife, husband, child, grand child, parent, brother or sister, nephew or niece of such a person.

Insurable interest.

69. (1) No provident society shall carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution, amongst policies maturing for payment within certain time limits, of certain sums.

Dividing business.

(2) The Registrar shall, as soon as possible, take steps to have any provident society which carries on business on the dividing principle wound up:

Provided that, where any such Provident Society carrying on business at the commencement of this Act under the provisions of the Travancore Provident Insurance Societies Act of 1108 as amended by the Travancore Provident Insurance Societies Amendment Act of 1110, applies within three months of such commencement to the Registrar for permission to continue to carry on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act, the Registrar shall permit the Society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society.

70. (1) No provident society except a provident society registered under the provisions of the Provident Insurance Societies Act of 1108, as amended by the Travancore Provident Insurance Societies Amendment Act 1110, shall receive any premium or contribution until it has obtained from the Registrar a certificate of registration.

Registration.

(2) Every application for registration shall be accompanied by—

(a) a certified copy of the rules of the society and where the society is a company incorporated under the Travancore Companies Act, IX of 1114, or under the Travancore Companies Act 1092, a certified copy of the Memorandum and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society;

(b) the names and addresses of the proprietors or directors, and the managers of the society;

(c) a certificate from our Accountant-General that the initial deposit referred to in Section 73 has been made; and

(d) a declaration verified by an affidavit that the minimum working capital required by Section 72 is available.

(3) The Registrar may refuse to issue a certificate of Registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the minimum working capital required by Section 72 is available, but if he is so satisfied he shall register the society and its rules and issue to the society a certificate of registration thereof.

(4) The Registrar may after giving previous notice in writing in such manner as he thinks fit specifying the grounds for the proposed cancellation, and allowing the society concerned an opportunity of being heard, apply to the Court and obtain sanction for cancellation of the registration made under this section or made under the provisions of the Travancore Provident Insurance Societies Act of 1108;

(a) if he is satisfied as the result of an inquiry made under Section 87—

(i) that the society is insolvent or is likely to become so, or

(ii) that the business of the society is conducted fradulently or not in accordance with the rules there of, or that it is in the interests of the policy-holders that the society should cease to carry on business,

(b) If the initial deposit or any of the further deposits required by Section 73 has not been made, or

(c) if the society, having failed to comply with any requirement of this Act, has continued such failure for a period of one month after notice of such failure has been conveyed to the society by the Registrar:

Provided that the Registrar may, if he thinks fit, instead of applying for cancellation of the registration under sub-clause (i) of clause (a) of this sub-section make a recommendation to the Court that the contracts of the society should be reduced in such manner, and subject to such conditions as he may indicate.

(5) No proceeding taken and no order passed under Section 83 in respect of a society registered under the Travancore Provident Insurance Societies Act of 1108 shall be construed as tantamount to insolvency of the society for purposes of this section.

Prohibition of managing agents,

71. The provisions of Section 32 shall apply to provident societies as they apply to insurers.

Working capital.

72. No provident society established after the commencement of this Act shall be registered unless it has a paid up capital sufficient to provide as working capital a net sum of not less than five thousand rupees exclusive of depots made under this Act and exclusive in the case of a company of any expenses incurred in connection with the formation of the company.

73. (1) Every provident society shall, if established after the commencement of the Act before the society applies for registration under Section 70 deposit and keep deposited with Our Accountant-General for and on behalf of Our Government, cash or approved securities amounting at the market value of the securities on the date of deposit to five thousand rupees, and shall thereafter make each year a further deposit amounting to not less than fifteen per cent. of the gross premium income for the year including admission fees and other fees received by the society, until the total amount so deposited and kept is twenty-five thousand rupees.

Deposit.

(2) Deposits made under Section 4 of the Travaccore Provident Insurance Societies Act 1108 as ammended by the Provident Insurance Societies Amendedment Act 1110, shall be deemed to be deposited under the provisions of this section.

(3) The provisions of sub-sections (8) (9) and (10) of Section 7 and of sub-section (1) of section 8 shall apply to the deposits made under this section as they apply to deposits made by an insurer.

74. (1) Every provident society established after the commencement of this Act shall in its rules set-forth—

Rules.

(*a*) the name, the object and the location of the registered office of the society;

(*b*) the contingencies or classes of contingencies on the happening of which money is to be paid;

(*c*) the conditions to be complied with before, and the payments to be made on, admission to the society;

(*d*) the rates of premium or contribution, and the periods for which or the times at which premiums or contributions are payable;

(*e*) the maximum amount payable to a subscriber or policy-holder;

(*f*) the nature and amounts of the benefits provided for by the society;

(*g*) the circumstances in which a bonus may be paid to a policy-holder;

(*h*) the nature of the evidence required for the proof of the happening of any contigency on which money is to be paid;

(*i*) the circumstances in which policies may be forfeited or renewed or the whole or a part of the premium paid on a policy may be returned, or a surrender value of a policy may be granted;

(*j*) the penalties for delay in paying or failure to pay premiums or contributions

(*k*) the proportion of the annual income of the society which may be disbursed on and the provisions to be made for meeting the expenses of the management of the society,

(*l*) the person or persons who are the authority which shall have power to invest the funds of the society;

(*m*) the provisions for appointment of auditors and their remuneration;

(n) the procedure to be adopted in altering the rules of the society;

(o) unless these are provided for in the articles of Association of a society which is company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act 1092.

(i) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society;

(ii) the manner of raising additional capital; and

(iii) the provisions for the holding of general meetings of the members and policy-holders and for the powers to be exercised and the procedure to be followed therat; and

(p) such other matters as may be prescribed.

(2) Where the rules of any provident society registered under the Travancore Provident Insurance Societies Act 1108 fail to comply with the provisions of this section the society shall, before the expiry of twelve months from the commencement of this Act amend the rules so as to comply with these provisions.

Amendment of rules.

75. (1) No amendment of any rule of a provident society shall be valid until it has been sent to the Registrar and has been registered by him.

(2) The Registrar on being satisfied that the proposed amendment is not contrary to the provisions of this Act shall, unless he is of opinion that the amendment unfairy affects the rights of existing members or policy-holders of the society, issue to the society an acknowledgment of the registration of the amended rule.

Supply of copy of rules.

76. Every provident society shall on demand deliver free of cost to any member of the society a copy of the rules of the society and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

Registered Office.

77. Every provident society shall have an office (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all communications and notices may be addressed, and shall give notice to the Registrar of any change in the location there-of within twenty eight days of its occurrence.

Publication of authorised capital to contain also subscribed and paid up capital.

78. Where any notice, advertisement or other official publication of a provident society contains a statement of the amount of the authorised capital of the society the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Registers and books.

79. Every provident society shall keep at its registered office.

(a) a register of members in which shall be entered the name, address and occupation, if any, of every proprietor, director, manager or Secretary and of every member of the society;

(b) a register of record or policies which shall be entered in respect of every policy issued by the society, the name and address of the policy holder the date when the policy was effected and a record of any transfer, assignment or nomination of which the society has notice ;

(c) a register of claims in which shall be entered every claim made, together with the date of the claim the name and address of claimant and the date on which the claim is discharged or in the case of a claim which is rejected the date of rejection and the grounds therefor;

(d) a register of agents in which shall be entered the name and address of every agent employed by the society ;

(e) a cash book in which shall be entered separately for each class of contingency separately specified in Section 65 all sums received and expended by the society and the matters in respect of which the receipt or expenditure takes place ;

(f) ledger ; and

(g) a journal.

Revenue account balance sheet and annual statements.

80. (1) Every provident society shall at the expiry of the calendar year prepare a revenue account and balance-sheet in the prescribed form verified in the prescribed manner together with a report on the general state of the society's affairs and shall cause the revenue account and balance sheet to be audited by an auditor, and the auditor shall so far as may be in the audit of a provident society have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities imposed on, an auditor of companies by Section 183 of the Travancore Companies Act IX of 1114.

(2) Every provident society shall at the expiry of the calendar year prepare with respect to that year.

(a) a statement showing separately for each class of contingency separately specified in Section 65.

(i) the number of new policies effected, the total amount insured thereby and the total premium income received in respect thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and

(ii) the total amount of claims made and the total amount paid in satisfaction thereof ;

(b) a statement showing details of every insurance effected on a life other than the life of the person insuring, and

(c) a statement showing the total amount paid as allowances to agents and canvassers

(3). Until the expiry of two years from the commencement of this Act this selection shall apply to provident societies registered

before the commencement of this Act under the Provident Insurance Societies Act 1103, as if the reference to the calendar year were a reference to either the financial year or the calendar year.

Actarial report and abstract.

81. (1) Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made into its financial condition including the valuation of its liabilities and assets by an actuary.

(2) the report of the actuary shall contain an abstract in which shall be stated—

(a) the general principles adopted in the valuation, including the method by which the valuation age of lives was ascertained,

(b) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation,

(c) the reserve values held against policies effected.

(d) the rate of interest assumed, and

(e) the provision made for expenses, and shall have appended to it a certificate signed by a principal officer of the society that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(3) If the actuary finds that the financial condition of the society is such that no surplus exists for distribution as bonus to the policy-holders or as dividend to the share-holders, he shall state in his report whether in his opinion the society is insolvent and, if so, whether it should be wound up or not, and the extent to which in his opinion existing contracts would be modified or existing rates of premium should be adjusted to make good the deficiency in the assets.

Submission of returns to Registrar.

82. (1) The revenue account and balance-sheet with the auditor's report thereon and the report on the general state of the society's affairs referred to in sub-section (1) of Section 80, and the statements referred to in sub-section (2) of Section 80, shall be furnished as returns to the Registrar within three months from the end of the period to which they relate and copies of the revenue account and balance-sheet and the auditor's report thereon and of the report on the general state of the society's affairs shall, on the application of any member or policy-holder made within two years from the date on which the document was so furnished, be sent to him within fourteen days from the receipt of the application on payment of a fee of one rupee.

(2) All the materials necessary for the proper valuation of the liabilities of the society under the provision of Section 81 shall be placed at the disposal of the actuary within three months from the end of the

period to which such material relates, and the report and abstract referred to in Section 81 shall be furnished as a return to the Registrar within a further period of three months.

(3) The provisions of Section 17 shall apply to the accounts and balance-sheet of a provident society being a company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act, 1092, as they apply to the accounts and balance-sheet of an insurer.

Actuarial examination of Schemes.

83. (1) Every provident society, established after the commencement of this Act shall cause every scheme of insurance which it proposes to put into operation, and every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1108, shall cause any new scheme which it proposes to put into operation after such commencement to be examined by an actuary and shall not receive any premium or contribution in connection with the scheme until the actuary has certified that the scheme is sound and such certificate has been forwarded to the Registrar.

(2) The provisions of sub-section (1) shall apply to any alteration of a scheme under sub section (1) already in operation, but the Registrar may if he is of opinion that the alteration unfairly affects the interest of existing policy-holders, prohibit the alteration and, if he does so, the society shall not put the altered scheme into operation unless it first discharges to the satisfaction of the Registrar all its liabilities to those of the existing policy-holders who dissent from the alteration.

(3) Every provident society registered before the commencement of the Act under the provisions of the Provident Insurance Societies Act of 1108, shall, as soon as may be and in any event before the expiry of six months from the commencement of this Act submit all schemes of insurance other than those permitted to be carried on under the proviso to sub-section (2) of Section 69 which the society has in operation at the commencement of this Act, to examination by an actuary and shall send the report of the actuary thereon to the Registrar.

(4) The report of the actuary shall state in respect of each scheme whether it is actuarially sound and if not sound what alterations should be made to make it actuarially sound, and, where no actuarial report such as is referred to in Section 81 has been made within the two years preceding the examination, the report shall also state whether the assets of the society are sufficient to meet its liabilities under the existing schemes, and, if not, how in the opinion of the actuary the existing contracts should be modified. Such modification being based on the principle that the fund of each scheme shall be apportioned equitably mongst the policy-holders of that scheme.

(5) The Registrar shall after due consideration of the report issue

(*a*) where a scheme is reported to be actuarially sound that such scheme be continued;

(*b*) where a scheme is reported to be actuarially unsound—

(i) if the assets of the society are found to be sufficient to meet the liabilities under the existing scheme that the altered scheme proposed by the actuary be adopted;

(ii) if the assets of the society are found to be insufficient to meet the liabilities under the existing scheme, that the existing contracts be modified as reported by the actuary or in any other equitable manner which the Registrar may deem fit to determine.

(6) (*a*) Every provident society permitted to carry on business under the proviso to sub-section (2) of Section 69 shall as soon as may be and in any event before the expiry of one and one-half of an year from the commencement of this Act submit a full account of its assets and liabilities and the actual amount contributed on account of each policy kept alive on that date, to examination by an actuary and shall send the report of the actuary thereon to the Registrar.

(*b*) The report of the actuary shall state in what manner, having regard to the assets and liabilities of the society such policies may be converted into actuarially sound policies, fixing for such purpose the amount which may be credited to the account of each such policy-holder.

(*c*) The Registrar shall after due consideration of such report order that such policies shall be converted into actuarially sound policies as reported by the actuary or in any other equitable manner which the Registrar shall deem fit to determine.

(7) (*a*) Any order passed by the Registrar under sub-sections (5) and (6) shall as between the policy-holder and the society be binding and conclusive.

(*b*) The Registrar shall give notice of every such order to the society concerned and the society shall within two months from the date of receipt of such notice intimate to every-policy holder the order in so far as it relates to such policy-holder.

(*c*) A scheme ordered to be adopted under sub-section (5) or sub-section (6) shall from the date of such order be deemed to be a scheme for purposes of sub-sections (1) and (2) of this section.

Separation of accounts and funds.

84. Where a provident society effects policies of insurance in connection with more than one of the classes of contingency separately specified in Section 65 the receipts and payments in respect of each such class shall be recorded in a separate account in the cash book kept in accordance with Section 79.

Investment of funds.

85. (1) Every provident society shall, unless it already holds invested in approved securities not less than fifty per cent of the total assets of the society invest all surplus assets in such securities until the total amount

so invested amounts to not less than fifty per cent of the total assets of the society, and shall thereafter keep invested in such securities not less than fifty per cent of the total assets of the society.

(2) No funds or investment of a provident society except a deposit made under Section 73 shall be kept otherwise than in the name of the society.

(3) No loan shall be made out of the assets of a provident society to any director or officer of the society except on the security of a policy of insurance held in the society and within its surrender value and no such loan shall be made to any concern of which a director or officer of the society is a director or partner.

(4) Any director or officer of a society which contravenes the provisions of sub-section (3), who is knowingly a party to the contravention shall without prejudice to any other penalty which he may incur be jointly and severally liable to the society for the amount of the loan and such amount, together with interest from the date of the loan at such rate not exceeding tweleve per cent per annum as the Registrar may fix, shall on application by the Registrar to any civil court of competent jurisdiction be recoverable by execution as if a decree for such amount has been passed by that court.

Inspection of books.

86. The books of every provident society shall at all reasonable times be open to inspection by the Registrar or any person appointed by him in this behalf or by any member or policy-holder of the society who has made an application in this behalf to the Registrar.

Inquiry by or on behalf of Registrar.

87. (1) The Registrar shall at least once in two years and may, if he thinks fit, at any time visit personally or depute a suitable person to visit the principal office of a provident society and inquire into the solvency of the society and the manner in which the business of the society is conducted, or may, after giving notice to the society and giving it an opportunity to be heard, direct such an inquiry to be made by an auditor or actuary appointed by him.

(2) For the purposes of any such inquiry the Registrar or the auditor or actuary as the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanation as he may require on any matter relating to the affairs of the society.

(3) The results of any such inquiry shall be recorded in a report which shall be kept in the office of the Registrar and a copy of the report shall be sent to the society concerned and shall be open to inspection by any member or policy-holder of the society.

Winding up by Court and voluntary winding up.

88. (1) The court may order the winding up of a provident society being a company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act 1092, and the provisions of that Act shall subject to the provisions of this part, apply accordingly.

(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of a provident society, if the registration of the society is cancelled by the Registrar under sub-section (4) of Section 70 and he applies for the winding up of the society.

(3) A provident society being a company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act, 1092, may be wound up voluntarily under this Act if a resolution is passed by the proprietors that the society should be wound up except for the purpose of effecting an amalgamation or reconstruction of the society or on the ground that by reason of its liabilities it cannot continue its business.

(4) A provident society not being a company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act, 1092, may be wound up voluntarily under this Act if a resolution is passed by the proprietors that the society should be wound up voluntarily for the purpose or on the ground specified in sub-section (3) and the Registrar may in any case where he has ordered the cancellation of the registration of a society under sub-section (4) of Section 70 order the winding up of the society under this Act.

Reduction of insurance contracts.

89. The Court may make on order reducing the amount of the insurance of contracts of a provident society upon such terms and subject to such conditions as the Court thinks just—

(*a*) if the Registrar as an alternative to cancelling the registration of a society under sub-section (4) of Section 70 applies to the Court in this behalf,

(*b*) if while a society is in liquidation the Court thinks fit;

(*c*) if when a society has been proved to be insolvent the Court thinks fit to do so in place of making an order for the winding up of the society; or

(*d*) if the Court is satisfied on an application made in this behalf by the society supported by the report of an actuary, and after giving the policy holders an opportunity to be heard that it is desirable to do so.

Appointment of liquidators.

90. (1) Where a provident society is to be wound up whether under the Travancore Companies Act IX of 1114 or under this Act the society shall, within seven days from the date of the order of the Court ordering the winding up or the passing of the resolution authorising the winding up as the case may be, give notices thereof to the Registrar and except where the winding up is done by an order of the Court the Registrar shall appoint the liquidator and shall determine the remuneration to be paid to him.

(2) Any liquidator so appointed may be removed by the Registrar if satisfied that the duties entrusted to him are not being properly discharged.

91. (1) A liquidator appointed to wind up a society shall have power :—

Powers of liquidator.

(*a*) to institute or defend any legal proceedings on behalf of the society by his name of office ;

(*b*) to determine the contribution to be made by members of the society respectively to the assets of the society ;

(*c*) to investigate all claims against the society and to decide questions of priority arising between claimants;

(*d*) to determine by what persons and in what proportion the costs of the liquidation are to be borne;

(*e*) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society;

(*f*) to summon, and enforce the attendance of, witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 110C; and

(*g*) with the sanction of the Registrar to employ such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties.

(2) The liquidator shall, for settling the list of contributories and realising the amount of contributions have the same powers as an official liquidator appointed by the Court for the winding up of a company under the Travancore Companies Act IX of 1114.

92. (1) As soon as a liquidator is appointed to wind up a society he shall take charge of all property movable or immovable of the society and of all its books and documents.

Procedure at liquidation.

(2) If any proprietor or officer of the society or any other person retains any portion of the assets of the society or fails to deliver to the liquidator any book or document when so required by the liquidator, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and the Court, may order the delivery of the assets or book or document to the liquidator.

(3) The liquidator shall within fifteen days of his appointment send notice by Post to all persons who appear to him to be creditors of the society that a meeting of the creditors of the society will be held on a date not being less than twenty-one or more than twenty-eight days after his appointment, and at a place and hour to be specified in the

notice, and shall also advertise notice of the meeting once in Our Government Gazette and once at least in two newspapers circulating in the Province in which the society is situated.

(4) At the meeting so held the creditors shall determine whether an application shall be made for the appointment of any person as liquidator in the place of or jointly with the liquidator already appointed, or for the appointment of a committee of inspection, and, if they so resolve and an application accordingly is made at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting, the Registrar shall appoint a suitable person in place of or jointly with the liquidator already appointed, and, if so desired, a committee of inspection.

(5) The committee of inspection shall subject to any prescribed conditions, have a general power of supervision over the acts of the liquidator and shall have the right to inspect his accounts at all reasonable times.

(6) The liquidator, shall, with such assistance from an actuary as may be required ascertain as soon as practicable the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society, and shall give notice of the amount so found to each such person in the prescribed manner and each such person on receiving such notice shall be bound by the value so ascertained.

(7) The liquidator shall make a valuation of the assets of the society and an estimate of the costs of the winding up and shall on the basis of these settle the list of contibutories.

(8) The liquidator shall apply to the Registrar for an order for the return of the deposit made by the society under Section 73 and the Registrar shall on such application order the return of the deposit subject to such terms and conditions, as he may think fit.

(9) In administering and distributing the assets of the society the liquidator shall have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Registrar.

(10) The liquidator shall keep books of account in which he shall record the proceedings at all meetings attended by him all amounts received or expended by him and any other matter that may be prescribed, and these books may, with the sanction of the Registrar be inspected by any creditor or contributory.

(11) If the winding up continues for more than a year, the liquidator shall summon a meeting of the creditors and contributories at the end of the first year and of each succeeding year, and shall lay before them an account of his acts and dealings and of the conduct of the winding up, and that account, together with any views expressed thereon by the meeting shall be forwarded by the liquidator to the Registrar.

(12) So far as is not otherwise provided herein or is not otherwise prescribed under this Act the liquidator shall so far as practicable follow the procedure to be followed by an official liquidator appointed by the Court for the winding up of a company under the Travancore Companies Act, IX of 1114.

93. (1) As soon as the affairs of a provident society are fully wound up the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation thereof.

Dissolution of provident society.

(2) Notice of the meeting shall be sent to each person individually and shall be advertised in Our Government Gazette and in at least two newspapers circulating in the District in which the society is situated.

(3) Within one week after the meeting the liquidator shall send to the Registrar a copy of the account and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting.

(4) The Registrar may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Registrar within six months.

(5) If the Registrar is satisfied that the affairs of the society have been fully wound up he shall register the account of the liquidator who shall forthwith make over to the Registrar sums, if any, remaining undisposed of; and on the expiry of three months from the registering of the account the Registrar shall declare the society dissolved and cause the dissolution of the society to be notified in Our Government Gazette and the liquidator shall thereupon be discharged from further responsibility.

(6) If within a period of five years from the date of which any sums have been made over to the Registrar under sub-section (5) an order of a Court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal, the said sums shall become the property of Our Government.

94. (1) The provisions of Section 38 and Section 39 relating to assignment, transfer, and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (a) of Section 65

Nomination and assignment.

(2) No nomination shall be valid if the person nominated is not the husband, wife, father, mother, child, grant-child, brother, sister, nephew or niece of the holder of the policy.

PART IV.

Mutual Insurance Companies and Co-operative Life Insurance Societies.

95. (1) In this Part—

Definitions.

(a) "Mutual Insurance Company" means an insurer, being a Company incorporated under the provisions of the Travancore Companies Act X of 1114 or the Travancore Companies Act 1092, which has no share capital and of which by its constitution all policy-holders and only policy-holders are members; and

(b) "Co-operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members:

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act.

(2) Notwithstanding anything contained in sub-section (1), other co-operative societies may be admitted as members of a Co-operative Life Insurance Society, without being eligible to any dividend, profit or bonus.

(3) Subject to any rules made by Our Government, the Registrar of Co-operative Societies may register co-operative societies for the insurance of a cattle or crops or both under the provisions of the Co-operative Societies Act.

(4) Our Government may make rules to govern such societies, and the provisions of this Act in so far as they are inconsistent with those rules, shall not apply to such societies.

Application of Act Mutual Insurance Companies and Co-operative Life Insurance Societies

96. The provisions of Sections 6 and 7 and sub-section (2) of Section 20 so far as those provisions are inconsistent with the provisions of this Part, shall not apply, and the provisions of this Part shall apply to Mutual Insurance Companies and Co-operative Life Insurance Societies.

Working capital of Mutual Insurance Companies and Co-operative Life Insuranee Societies.

97. No Mutual Insurance Company incorporated after the commencement of this Act and no Co-operative Life Insurance Society registered after that date under the Co-operative Societies Act shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees, exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of

Section 98 of this Act and of the preliminary expenses, if any, incurred in the formation of the company or society.

98. (1) Every Mutual Insurance Company and every Co-operative Life Insurance Society shall in respect of the life insurance business carried on by it in Travancore deposit and keep deposited with Our Accountant-General for and on behalf of Our Government, a sum of two hundred thousand rupees in cash or in approved securities estimated at the market value of the securities on the day of deposit.

Deposits to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies.

(2) The deposit referred to in sub-section (1) may be made in instalments, of which the first shall be a payment, made before or at the time the application for registration under this Act is made, of twenty-five thousand rupees or such sum as with any deposit previously made by the insurer under the provisions of the Travancore Life Assurance Companies Act brings the amount deposited up to twenty-five thousand rupees, and the subsequent instalments shall be annual instalments made before the expiry of each subsequent year of an amount in cash or in approved securities estimated at the market value of the securities on the day of payment of the instalment, equal to one-third of the gross premium income received in the previous year.

99. No transferees or assignees of a policy by an insurer to whom this Part applies shall become a member of a Mutual Insurance Company or a Co-operative Life Insurance Society merely by reason of any such transfer or assignment.

Transferees and assignees of policies not to become members.

100. Notwithstanding the provisions of Section 84 and Section 165 of the Travancore Companies Act IX of 1114 a Mutual Insurance Company or a Co-operative Life Insurance Society may instead of sending the notices and the copies of the balance-sheet revenue account and other documents which they are required to send to the members under those sections, publish such notices or documents in a newspaper or newspapers circulating in the place where the principal office of the company is situated.

Publication of notices and documents of Mutual Insurance Companies and Co-operative Life Insurance Societies.

101. Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, on the application of any member made within two years from the date on which any such document is furnished to the Registrar of Companies under the provisions of Section 170 of the Travancore Companies Act IX of 1114 or to the Registrar of Co-operative Societies, furnish a copy of the document free cost to the member within fourteen days of the application.

Supply of documents to members.

Part V.

Miscellaneous.

Penalty for default in complying with or act in contravention of this Act.

102. (1) Except as otherwise provided in this Act any insurer who makes default in complying with or acts in contravention of any requirement of this Act and where the insurer is a Company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing default, with an additional fine which may extend to five hundred rupees for every day during which the default continues.

(2) Any provident society which makes default in complying with any of the requirements of Part III and any director, managing agent, manager, secretary or other officer of the society who is knowingly a party to the default, shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default with fine which may extend to two hundred and fifty rupees for every day during which the default continues.

Penalty for transacting insurance business in contravention of Sections 3, 6, 97 and 98.

103. (1) Any insurer or any person acting on behalf of an insurer, who transacts any class of insurance business in contravention of any of the provisions of Section 3, Section 6, Section 7, Section 97 or Section 98 or does any one or more of the acts constituting the business of insurance in relation to any such class of insurance business shall be punishable with fine which may extend to two thousand rupees.

(2) Any person knowingly taking out a policy of insurance with any insurer or person guilty of an offence under sub-section (1) shall be punishable with fine which may extend to five hundred rupees:

Provided that nothing in this section shall apply to the business of reinsurance between the Head Office of an insurer in Travancore and the Head Office of an insurer not having an office in Travancore.

Penalty for false statement in documents.

104. Whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purpose of any of the provisions of this Act wilfully makes a statement false in any material particular knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupess, or with both.

Wrongfully obtaining or withholding property.

105. Any director, managing agent, manager or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or authorised by this Act shall, on the complaint of the

insurer or any member or any policy holder thereof, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied and in default to suffer imprisonment for a period not exceeding two years.

Wrongfully diminishing the insurance fund.

106. If on the application of an insurer or any member of an insurance company or any policy-holder or the liquidator or of an insurance company (in the event of the insurer being in liquidation) the Court is satisfied that by reason of any contravention of the provisions of this Act the amount of the life insurance fund has been diminished, every person who was at the time of the contravention a director manager, liquidator or an officer of the insurer shall be deemed in respect of the contravention to have been guilty of misfeasance in relation to the insurer unless he proves that the contravention occurred without his consent or connivance and was not facilitated by any neglect or omission on his part ; and the Court shall have all the powers which a Court has under Sections 291 and 293 of the Travancore Companies Regulation IX of 1114, and shall also have the power to assess the sum by which the amount of the life insurance fund has been diminished by reason of the misfeasance and to order any person guilty thereof to contribute to that fund the whole or any part of that sum by way of compensation.

Previous sanction of Government for institution of proceedings.

107. Except where proceedings are instituted by the Registrar no proceedings under this Regulation against an insurer or any director, manager or other officer of an insurer or any person who is liable under sub-section (2) of Section 41 shall be instituted by any person unless he has previous thereto obtained the sanction of Our Government to the institution of such proceedings.

Power of Court to grant relief.

108. If any proceedings, Civil or Criminal, it appears to the court, hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default breach of duty or breach of trust, the court may relieve him either wholly or partly from his liability on such terms as it may think fit.

Cognisance of offences.

109. No court inferior to that of a Magistrate of the First Class shall try any offence under this Act.

Appeals.

110. (1) An appeal shall lie to the court having jurisdiction from any of the following orders, namely :—

(a) an order under Section 3 refusing to register, or cancelling the registration of an insurer ;

(b) an order under Section 5 directing the insurer to change his name ;

(c) an order under Section 42 cancelling the license issued to an agent ;

(d) an order under Section 75 refusing to register an amendment of rules ;

(e) an order under Section 87 directing an enquiry by an auditor or actuary ; or

(f) an order made in the course of the winding up or insolvancy of an insurer or a provident society.

(2) The court having jurisdiction for the purpose of sub-section (1) shall be the District Court within whose local limits the principal place of business of the insurer concerned is situate.

(3) An appeal shall lie from any order made under sub-section (1) to the authority authorised to hear appeals from the decisions of the court making the same.

Services of notices.

111. (1) Any process or notice required to be served on an insurer or provident society shall be sufficiently served if addressed to any person registered with the Registrar as a person authorised to accept notices on behalf of the insurer of provident society and left at. or sent by registered Post or Anchal to the address of such person as registered with the Registrar.

(3) Any notice or other document which is by this Regulation required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed to be notice to the holder of such policy.

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer or to a provident society notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

Declaration of interim bonus

112. Notwithstanding anything to the contrary contained in this Regulation an insurer carrying on the business of life insurance shall be at liberty to declare an interim bonus or bonuses to policy-holders whose policies mature for payment by reason of death or otherwise during the intervaluation period on the recommendation of the investigating actuary made at the last preceding valuation.

Acquisition of surrender values by policy.

113. (1) Where a definite number of premiums is payable a policy of life insurance on which all premiums have been paid for three consecutive years shall acquire a guaranteed surrender value and notwithstanding any contract to the contrary shall not lapse by reason of non-payment of further premium but shall notwithstanding such non-payment be kept alive to the extent of its paid up value.

Explanation :—For the purposes of this sub-section the paid up value of a policy shall be an amount bearing to the total sum assured by the policy the same proportion as the total of the premiums already paid on the policy bears to the total of the premiums payable under the policy.

(2) A policy kept alive to the extent of its paid up value under sub-section (1) shall not participate in any profits of the insurer earned after the conversion of the policy into a paid up policy.

(3) This section shall not be apply to

(*a*) policies in respect of which the sum assured is payable only on the happening of a contingency which may not arise, or

(*b*) where the paid up value will be less than one hundred rupees, or

(*c*) where the parties after the default has occured in payment of the premiums agree in writing to some other arrangement, or

(*d*) to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non-payment of premium.

Power of Our Government to make rules.

114. (1) Our Government may, subject to the conditions of previous publication by notification in Our Government Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe :—

(*a*) the qualifications to be possessed by actuaries;

(*b*) the manner in which it shall be determined for the purposes of this Act what is insurance business transacted in Travancore;

(*c*) the form referred to in clause (d) of sub-section (2) of Section 16;

(*d*) the manner in which the prospectuses and lables referred to in sub-section (1) of Seclion 41 shall be published and the form in which they shall be drawn up;

(*e*) the matters to be prescribed for the purposes of Section 48;

(*f*) the manner in which licenses to act as insurance agents may be issued or cancelled;

(*g*) the contingencies other than those specified in clauses (a) to (f) of Section 65 on the happening of which money may be paid by provident societies;

(*h*) the matters other than those specified in clauses (a) to (o) of sub-section (1) of Section 74 on which a provident society shall make rules;

(*i*) the form of any account, return or register required by Part III and the manner in which such account, return or register shall be verified;

(*j*) subject to the provisions of this Regulation the fees payable thereunder and the manner in which they are to be collected and

(k) the conditions and the matters which may be prescribed under sub-sections (5), (10) and (12) of Section 92.

(3) All rules made by Our Government under the provisions of Section 28 of the Travancore Provident Insurance Societies Act of 1108 and in force at the commencement of this Act shall so far as not in-consistent with the provisions of Part III continue in force and have effect as if duly made under this section until they are replaced by rules made under this section.

Alteration of forms.

115. Our Government may, on the application or with the consent of an insurer not being a company, alter the forms contained in the Schedules as respect that insurer, for the purpose of adapting them to the circumstances of that insurer:

Provided that nothing done under this section shall exempt the insurer from supplying all information required under this Act so far it is possible for the insurer to do so.

Power to exempt from certain requirements.

116. Our Government may, by notification in Our Government Gazette, exempt any insurer constituted, incorporated or domiciled in another Indian State or in British India from the provisions of Section 6 relating to deposits or from the provisions of sub-section (2) of Section 27 relating to the keeping of assets either absolutely or subject to such conditions or modifications as may be specified in the notification.

Saving of provisions of the Travancore Companies Act, IX of 1114.

117. Nothing in this Act shall affect the liability of an insurer being a company to comply with the provisions of the Travancore Companies Act, IX of 1114 in matters and not otherwise specifically provided for by this Act.

Exemption.

118 Nothing in this Act shall apply to any Trade Union registered under the Travancore Trade Unions Act or to any insurance business carried on by Our Government or to any fund which Our Government may by notification in Our Government Gazette exempt from the operation of this Act.

Policy of forms to be deposited with the Registrar.

119. Every insurer registered under this Act shall deposit and keep deposited with the Registrar copies of all standard forms of policy contracts issued by him in Travancore.

Determination of market value of securities deposited under this Act.

120. The market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Act with Our Accountant-General shall be determined by him and his decision shall be final.

121. In the first Schedule to the Travancore Limitation Act, for the entry in the third column relating to Article 73, the following entry shall be substituted, namely :—

Amendment to first Schedule to the Travancore Limitation Act.

"The date of the death of the deceased..........."

122. The Travancore Provident Insurance Socities Act of 1108 and the Travancore Life Assurance Companies Act are hereby repealed.

Repeals.

THE FIRST SCHEDULE.

See Section II.

Acts and Forms for the Preparation of Balance Sheet.

PART I—ACTS.

1. The balance-sheet required to be prepared in respect of every class of business carried on by an insurer is, in the form in which it is set out in Part II of this Schedule (Form A), appropriate to a case where the insurer maintains a separate fund in respect of life insurance business.

2. The balance-sheet of life insurance business shall be prepared as a separate document. The balance-sheet of any class of business may be prepared as a separate document instead of being incorporated by the addition of columns and headings in the general balance-sheet, but the totals of each such separate balance sheet (showing the total assets of the class of business, th balance at the credit of the life insurance fund or other separate fund or account the amount of shareholders' undivided profits, and outstanding liabilities) must in any case be incorporated in the general balance-sheet.

3. If any combined balance-sheet is for any purpose issued by an insurer, it shall be in accordance with the Form set out in this Schedule, and there shall not be included among the assets shown in any such combined balance-sheet any amount in respect of any holding in or advanced to any insurer whose assets and liabilities have been incorporated therein. Every combined balance-sheet must show clearly on the face thereof that it is a combined balance-sheet and must set out fully the name of every insurer whose assets and liabilities have been incorporated therein ; if the assets and liabilities of any person not being an insurer are included in a combined balance-sheet, the fact must be stated thereon.

4. Where any guarantee have been given by an insurer (otherwise than in the ordinary course of re-insurance business) in respect of the policies of any other insurer, the balance-sheet of the insurer by whom the guarantee was given must show clearly the name of every insurer whose policies have been so guaranteed and the extent of the guarantee :

Provided that this Act shall not apply where a combined balance-sheet is issued incorporating the assets and liabilities of the insurer whose policies are guaranteed.

5. Where any part of the assets of an insurer is deposited in any place outside Travancore as security for the owners of policies issued in the place, that balance-sheet shall state that part of the assets has been so deposited, and, if any such part forms part of the life insurance fund, shall show the amount thereof and the place where it is deposited. Where any combined balance-sheet is issued by an insurer for any purpose, the information required by this Act shall be shown in the aggregate in respect of all the insurers whose assets and liabilities have been incorporated in the balance-sheet.

6. There shall be appended to the balance-sheet a statement in Form AA as set out in Part II of this Schedule showing the market value and the book value of the assets.

7. Every balance-sheet shall contain the following certificates, namely :—

(a) a certificate signed by the same persons as are required by this Regulation to sign the balance-sheet explaining how the values as shown in the balance-sheet of the Investments in Stocks and Shares have been arrived at, and how the market value thereof has been ascertained for the purpose of comparison with the values so shown;

(b) a certificate signed by the same persons as are required by this Regulation to sign the balance-sheet and signed also, so far as respects the value of any items shown in the balance-sheet under the heading of "Reversions and Life Interests", by an actuary, certifying that the values of all the assets have been reviewed as at the date of the balance-sheet, and that in their belief the assets set forth in the balance-sheet are shown in the aggregate at amounts not exceeding their realisable or market value under the several headings—"Loans", "Reversions and Life Interest", "Investments", "Agents" Balances and Outstanding Premiums", "Interest, Dividends and Rents outstanding", "Interest, Dividends and Rents accruing but not due", "Amounts due from other Persons or Bodies carrying on Insurance Business", "Sundry Debtors", "Bills Receivable", "Cash" and the several items specified under "Other Accounts":

Provided that if the persons signing the certificate are unable to certify that the assets set forth in the balance-sheet are so shown as aforesaid, a full explanation of the basis upon which the values shown in the balance-sheet have been assessed shall be given in the certificate;

(c) a certificate signed by the same persons as are required by this Regulation to sign the balance-sheet and by the auditor certifying that no parts of the assets of the life

insurance fund has been directly or indirectly applied in contravention of the provisions of this Regulation relating to the application and investment of life insurance funds; and

(d) certificates signed by the auditor (which shall be in addition to any other certificate or report which he is required by law to give with respect to the balance-sheet) certifying—

(i) that he has verified the cash balances and the securities relating to the insurer's loans, reversions and life interests, and investments;

(ii) to what extent, if any, he has verified the investments and transactions relating to any trusts undertaken by the insurer as trustee; and

(iii) in the case of a combined balance sheet, that he has audited the balance-sheet and accounts of every insurer whose assets and liabilities are incorporated therein, or that any such balance sheet and accounts which have not been audited by him have been certified by independent auditors. The said certificate shall contain a reference to such reservations, if any, as may have been made by any auditor upon any report or certificate given by him with respect to the balance-sheet and accounts of any insurer whose assets and liabilities are incorporated in the combined balance-sheet.

8. If the value shown in the balance-sheet in respect of "Holdings in Subsidiary Companies" or "House property' have been increased since the last previous balance-sheet, the certificate required by paragraph (b) of the last foregoing regulation shall state the amount of every increase not solely due to the cost of subsequent additions or, as respects holdings in subsidiary companies, to increased profits, and shall contain an explanation of the reason therefor.

9. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely:—

(a) "combined balance-sheet" includes any combined statement made by an insurer of assets and liabilities in the form of a balance-sheet which includes the assets and liabilities of any other insurer; and

(b) "market value" means as respects any asset the market value thereof as ascertained from published market quotations or, if there be no such value, its fair value as between a willing buyer and a willing seller.

PART II.

FORM A.

Form of Balance-sheet.

Balance-sheet.............................of.........................193 .

	Life and Annuity Business. (1)			Other classes of Business. (2)			Total.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
Shareholders' Capital (each class to be stated separately)									
Authorised.— shares of Rs.									
Each Rs.									
Subscribed.—Shares of Rs.									
Each Rs.									
Called up:—Shares of Rs.									
Each Rs.									
Less unpaid calls Rs.									
Reserve of Contingency Accounts (*a*)									
Investment Reserve Accounts									
Profit and loss appropriation account balance									
Balances of Funds and Accounts									
Life Insurance Fund									

	Life and Annuity Business. (1)			Other classes of Business. (2)			Total.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
Loans :									
On Mortgages of property within Travancore									
On Mortgages of property outside Travancore									
On Security of Municipal and other public rates									
On Stocks and Shares									
On Insurer's policies within their surrender value									
On personal security									
To subsidiary Companies other than Reversionary (*f*)									
Reversions and Life Interests									

*Assets and Liabilities, Shareholders' Capital and Reserves, not allocated to any class of business specified in column (1) must be shown in column (2).

NOTES.—(*a*) The Reserves or Contingency Accounts must be separately stated.

(*f*) As respects life and annuity business full particulars of holdings in and loans to subsidiary companies must be stated, giving the name of each company, the number and description of each class of shares held, the amounts paid up thereon, and the value at which the holdings in each company stand in the balance-sheet.

PART II.

FORM A.—(*contd.*)

Form of Balance-sheet.

Balance-sheet.......................of........................193

	Life and Annuity Business. (1) Rs.	A.	P.	Other classes of Business. (2) Rs.	A.	P.	Total. Rs.	A.	P.
Fire Insurance Business Account	...	...	...	...	...	...	...	...	...
Marine Insurance Business Account	...	...	...	...	...	...	...	...	...
Accident and Miscellaneous Insurance Business Account	...	...	...	...	...	...	...	...	...
Other Accounts, if any (to be specified)	...	...	...	...	...	...	...	...	...
Pension or Superannuation Accounts (*b*)	...	...	...	...	...	...	...	...	...
Debenture Stock per cent	...	...	...	...	...	...	...	...	...
Loans and Advances (*c*)	...	...	...	...	...	...	...	...	...
Bills payable (*c*)	...	...	...	...	...	...	...	...	...

	Life and Annuity Business. (1) Rs.	A.	P.	Other classes of Business. (2) Rs.	A.	P.	Total. Rs.	A.	P.
Reversions and Life Interests purchased	...	...	...	...	...	...	...	...	...
Loans and Reversions and Life Interests	...	...	...	...	...	...	...	...	...
Debentures and Debenture stocks of subsidiary reversionary companies (*f*)	...	...	...	...	...	...	...	...	...
Ordinary stocks and shares of subsidiary reversionary companies (*f*)	...	...	...	...	...	...	...	...	...
Loans to subsidiary reversionary companies (*f*)	...	...	...	...	...	...	...	...	...

(*b*) If the insurer has not full and unrestricted control of the assets constituting the Pension or Superannuation accounts either those Accounts and the assets and liabilities relating thereto must be omitted from the balance sheet or the assets of which the insurer has not such control must be clearly indicated on the face of the balance-sheet.

(*c*) If the insurer has deposited security as cover in respect of any of these items, the amount and nature of the securities so deposited must be clearly indicated on the face of the balance-sheet.

PART II.

FORM A.—(*contd.*)

Form of Balance-sheet.

Balance-sheet..............................of................................193 .

	Life and Annuity Business. (1)			Other classes of Business. (2)			Total.				Life and Annuity Business. (1)			Other classes of Business. (2)			Total.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.		Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
										Investments	...	...	...	...	...	...	...	...	...
Estimated liability in respect of outstanding claims whether due or intimated (*d*)	...	...	...	...	...	...	...	...	...										
Annuities due and unpaid (*d*)	...	...	...	...	...	...	...	...	...	Deposit with the Accountant General (Securities to be specified)	...	...	...	...	...	...	...	...	...
Outstanding Dividends	...	...	...	...	...	...	...	...	...	Travancore Government Securities	...	...	...	...	...	...	...	...	...
Amounts due to other Persons or Bodies carrying on Insurance Business (*c*)	...	...	...	...	...	...	...	...	...	Other approved securities (particular to be given) Holdings in subsidiary companies (*f*)	...	...	...	...	...	...	...	...	...
										House property	...	...	...	...	...	...	...	...	...
Sundry Creditors (including outstanding and accruing expenses and taxes (*c*)	...	...	...	...	...	...	...	...	...	Freehold and Leasehold ground rents and rent charges	...	...	...	...	...	...	...	...	...
										Agents' balances	...	...	...	...	...	...	...	...	...
Other sums owing by the insurer (particulars to be given) (*c*)	...	...	...	...	...	...	...	...	...	Outstanding Premiums (*g*)	...	...	...	...	...	...	...	...	...
Contingent Liabilities to be specified (*e*)	...	...	...	...	...	...	...	...	...	Interest, Dividends and Rents outstanding (*d*)	...	...	...	...	...	...	...	...	...

(*d*) These items are or have been included in the corresponding items in the Revenue or Profit and Loss Account. Outstanding and accruing interest, dividends and rents must be shown after deduction of income-tax must be provided for amongst the liabilities on the other side of the balance-sheet.

(*e*) Such items as amount of liability in respect of bills discounted, uncalled capital of subsidiary companies, uncalled capital of other investments, etc. must either be shown in their several categories under the heading "Contingent Liabilities" or the appropriate items on the assets side must be set out in such details as will clearly indicate the amount of the uncalled capital.

* (*g*) Either this item must be shown net or the commission must be provided for amongst the liabilities on the other side of the balance sheet.

PART II.

FORM A.—(*contd.*)

Form of Balance-sheet.

Balance-sheet......................of.............. .....193 .

	Life and Annuity Business (1)			Other classes of Business. (2)			Total.				Life and Annuity Business. (1)			Other classes of Business. (2)			Total.		
	Rs.	A.	P.	Rs.	A.	P.	Rs	A.	P.		Rs.	A	P.	Rs.	A.	P.	Rs.	A.	P.
										Interest Dividends and Rents, accruing but not due (*d*)	..	...	...	..	...	...	..	...	...
										Amounts due from other Persons or Bodies carrying on Insurance business (*h*)	..	...	..	..	...	...	..	...	...
										Sundry debtors (*i*)	..	...	..	..	...	...	..	...	...
										Bills receivable	..	...	..	..	...	...	..	...	...
Rs.										Cash	..	...	..	..	...	...	..	...	...
										At Bankers on Deposit Account	..	...	..	..	...	...	..	...	...
										At Bankers on Current Account and in hand	..	...	..	..	...	...	..	...	...
										At Call and Short Notice (*j*)	..	...	..	..	...	...	..	...	...
										Other Accounts to be specified (*k*)	..	...	..	..	...	...	..	...	...

(*h*) The aggregats amount owing by a subsidiary company or subsidiary companies is to be shown separately from all other assets and the aggregate amount owing to a subsidiary company or subsidiary companies is to be shown separately from all other liabilities.

(*i*) Amounts due from directors and officers must be shown separately.

(*j*) No amounts must be entered under this heading unless fully secured. If not fully secured the amounts must be included under the heading "Sundry Debtors."

(*k*) Under this heading must be included such items as the following, which must be shown under separate hadings suitably described : office furniture, goodwill, preliminary, formation and organisation expenses, development expenditre account, discount on debentures issued, other expenditure carried forward to be written off in future years, balance being loss on Profit and Loss Appropriation Accounts, etc. The amounts included in the balance-sheet must not be in excess of cost.

(*l*) Under the head "Other Accounts, if any, to be specified" on the left hand side, fines realised from the staff and their contribution towards the provident fund, if any, should be shown under separate sub-heads.

FORM AA.

Classified Summary of the assets of the Company on 19 .

Class of Asset.	Book value as per (a) below.	Market value as per (b) below.	Remarks as per (c) below.
(1) Securities of the Government of Travancore			
(2) Other approved securities (particulars to be given)			
(3) Loans on the Company's policies and within their surrender value			
(4) Loans on Mortgage of property			
(5) Loans on personal security			
(6) Other loans (particulars to be stated)			
(7) Land and House property			
(8) Cash on deposit in banks			
(9) Cash in hand and on current account in banks			
(10) Agents' balances and outstanding premiums			
(11) Interest, dividends and rents either outstanding or accrued but not due			
(12) Other assets (to be specified)			

The statement shall show—

(a) The value for which credit is taken in the balance-sheet for each of the abovementioned classes of assets.

(b) The market value of such of the abovementioned classes of assets as has been ascertained from published quotations after deduction of accrued interest included in market prices in those cases were accrued interest is included elsewhere in the balance-sheet.

(c) How the value of such of the abovementioned classes of assets as has not been ascertained from published quotations has been arrived at, and

(d) The rates of exchange at which the values of the assets other than in rupee currency have been converted into rupees.

The market values need not be shown separately where they are not less than the book values and a certificate to that effect is appended to the statement.

No amounts on account of any of the following items may be entered in the statement :—

Good will.

Preliminary, formation, organisation or development expenses.

Commission or discount on shares or debentures issued.

Commuted Commission.

Expenditure carried forward to be written off in future years.

THE SECOND SCHEDULE.

See Section II.

Regulations and Forms for the preparation of Profit and Loss Accounts.

PART I-- REGULATIONS.

1. The items on the income side of the Profit and Loss Account and Profit and Loss Appropriation Account must relate to income, whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not.

2. Deductions from Interest, Dividends and Rents to be shown in respect of income-tax must include all amounts in respect of Travancore Income-tax whether or not it has been or is to be deducted at source or paid direct.

3. The Interest, Dividends and Rents, less income-tax thereon shown in the revenue Accounts for any classes of business other than life insurance business including annuity business may, if the insurer so desires, be included with the corresponding items in the Profit and Loss Account.

PART II—FORMS.

FORM B.

Form of Profit and Loss Account.

Profit and loss Account of............for the year ended..........19 .

	Rs.	A.	P.		Rs.	A.	P.
Travancore Taxes on the Insurer's Profits (not applicable to any particular Fund or Account)				Interests, Devidends and Rents (not applicable to any particular Fund or Account) Rs. Less—Income Tax thereon Rs.			
Expenses of Management (not applicable to any particular Fund or Account)*				Profit on realisation of Investments (not credited to Reserves or any particular Fund or Account)			
Loss on Realisation of Investments (not charged to Reserves or any particular Fund or Account)				Appreciation of Investments (not credited to Reserves or any particular Fund or Account)			
Depreciation of Investments (not charged to Reservers or any particular Fund or Account)				Profit transferred from Revenue Accounts (details to be given)			
Loss transferred from Revenue Accounts (details to be given)				Transfer Fees			
Other Expenditure (to be specified)				Other Income to be specified)			
Balance for the year carried to Appropriation Account)				Balance being loss for the year carried to Appropriation Account			

* If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount must be shown separately.

FORM C.

Form of Profit and Loss Appropriation Account.

Profit and Loss Appropriation Account of........for the year ended....................19 .

	Rs.	A	P.		Rs.	A	P.
Balance being loss brougt forward from last year				Balance brought forward from last year Rs.			
Balance being loss for the year brought from Profit and Loss Account (as in Form B)				Less—Dividends since, paid in respect of last year (to be specified and if "free of tax" to be so stated)* Rs.			
Dividends paid during the year on Account of the current year (to be specified and if "free of tax' to be so stated)							
Transfers to any particular Funds or Accounts (details to be given)				Balance for the year brought from Profit and Loss Account (as in Form B)			
Balance at end of the year as shown in the Balance-sheet				Balance being loss at end of the year as shown in the Balance-sheet			

* NOTE :—This item may be shown on the other side of the Account if preferred.

THE THIRD SCHEDULE.

See Section 11.

Acts and Forms for the preparations of Revenue Accounts.

PART I— ACTS.

1. Form D. is, as set out in Part II of this Schedule, appropriate for life insurance business, but a separate revenue account must be prepared for every class of business in respect of which the insurer is required to maintain a separate account.

2. Form E is, as set out in Part II of this Schedule, appropriate for marine insurance business.

Form F is, as set out in Part II of this Schedule, appropriate for fire insurance business. A separate Revenue Account in the same form must be prepared for accident and miscellaneous insurance including embloyers liability insurance and motor vehicles insurance.

3. If any combined Revenue Account is for any purpose issued by an insurer it must be in accordance with the forms specified in this Schedule and must clearly show on the face thereof that it is a combined Revenue Account, and must set out fully the name of every insurer required to make separate returns under this Regulation whose Revenue and Expenditure have been included therein ; if the Revenue and Expenditure of any person not being an insurer are included in a combined Revenue Account, the fact must be stated thereon.

4. The items on the income side of the Revenue Account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not.

5. Re-insurance premiums, whether on business ceded or accepted, are to be brought into account gross (*i. e.*, before deducting commissions) under the heads of the premiums.

6. As respects life insurance business, the following statements shall be furnished to the Registrar every year showing details provided for in a Form pertaining thereto :—

(*a*) A statement in Form DD as set forth in Part II of this Schedule,

(*b*) A statement in Form DDD as set forth in Part II of this Schedule.

(*c*) A statement in Form DDDD as set forth in Part II of this Schedule.

7. The following information shall be supplied in addition to the Revenue Account namely, the gross premium written in Travancore for life, fire, marine and accident and miscellaneous insurance business.

8. Any office premises which form part of the assets of a life insurance fund must be treated as an interest earning investment, and accordingly, in the Revenue Account for life insurance business a fair rent for the premises must be included under the heading "Interest, Dividends and Rents" and in the Revenue Accounts for every class of business for which the premises are used proper charges for the use thereof must be included under the heading "Expenses of Management".

9. Where an insurer carries on the business of life insurance in conjunction with any other class of insurance business the expenses of management charged to the Life Insurance Revenue Account must not include more than a reasonable proportion of the common expenses and in particular no such account must be charged with more than a fair sum for the use of any office premises having regard to the income from the various classes of business carried on and to the extent to which the premises are used for the purposes of each class of business.

10. Deductions from Interest, Dividends and Rents in respect of income-tax must include all income-tax charged on such income whether or not it has been or is to be deduced at source or paid direct; the income-tax to be shown as so deducted in the life insurance Revenue Account is Travancore and Foreign income-tax, but the income-tax to be shown as deducted in Revenue Accounts of any other classes of business is Travancore income-tax only.

PART II FORMS.

FORM D

Form of Revenue Account Applicable to Life Insurance Business

Revenue Account of   for the year ended   19 .   in respect of   Business.

	Business within Travancore.	Business out of Travancore (a.)	Total		Business within Travancore.	Business out of Travancore.	Total
	Rs.	Rs.	Rs.		Rs.	Rs.	Rs.
Claims under Policies (including provision for claim due or intimated) less Re-insurances ...				Balance of Fund at the beginning of the year ...			
By death ...				Premiums, less Reinsurances ...			
By maturity ...				(i) First year premium ...			
Annuities, less Re-insurances ...				(ii) Renewal premiums ...			
Surrenders (including surrenders of bonus Less Re-insurances ...				(iii) Single premiums ...			
Bonuses in cash, less Re-insurances ...				Consideration for Annuities granted, less Reinsurance (c) ...			
Bonuses in reduction of premiums less Re- insurances ...				Interest, Dividends and Rents ...			
Commission— ...				Less—Incometax thereon (d) ...			
Less that on Re-insurances ...				Registration fees ...			
*Expenses of management (b)— ...							
(1) Commission and allowances				Other income to be specified ...			
(2) Salaries, etc., (other than to agents and those contained in item No. 1) ...							

NOTES.—(a) In the case of an insurer having his head office in Travancore, these columns apply only to business the premiums in respect of which are payable outside Travancore.

(b) If any sum has been deducted from this item and entered on the assets side of the balance sheet, the amount so deducted must be shown separately. Under this item the salary paid to the managing agent or managing director shall be shown separately, from the total amount paid as salaries to the remaining staff.

(c) All single premiums for annuities whether immediate or deferred, must be included under this heading.

(d) Travancore and Foreign income-tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recoved from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for Travancore and Foreign taxes, other than these shown under this item.

FORM D.—(*contd.*)

	Business within Travancore.	Business out of Travancore.	Total		Business within Travancore.	Business out of Travancore.	Total
(3) Traveling expenses ...							
(4) Director's fees ..							
(5) Auditor's fees ..							
(6) Law charges ...							
(7) Advertisements ...							
(8) Printing and Stationery ...							
(9) Other expenses of management (accounts to be specified) ...				Loss transferred to Profit and loss Account ...			
(10) Other payments (accounts to be specified) ...				Transferred from Appropriation Account.			
(11) Rents for offices belonging to and occupied by the insurer ...							
(12) Rents of other officers occupied by the insurer ...							
Bad debts : ...							
Travancore and Foreign Taxes ...							
Other expenditure (to be specified) ...							
Profit transferred to Profit and loss account ..							
Balance of Fund at the end of the year as shown in the Balance sheet ...							

(e) Under the head "Other Income" fines, if any, realised from the staff must be shown separately. All the amounts received by the insurer directly or indirectly whether from his Head Office or from any other source outside Travancore shall also be shown separately in the revenue account, except such sums as properly appertain to the capital account

* In the case of an insurer having his principal place of business outside Travancore the expenses of management for business out of Travancore and Total business need not be split up to the several sub-heads, if they are not so split up in his own country.

FORM DD.

Classified statement of life-insurance policies of the Company, for the year ending 19 .

	New life insurance business in respect of which a premium has been paid in the year.				Total life insurance business in force at end of the year.		
	Number of policies.	Sums insured and annuities per annum.	Single Premiums (including consideration for immediate annuities and all other premiums paid at the outset where no subsequent premium is payable.)	Yearly renewal premium income.	Number of policies.	Sums insured with bonuses and annuities per annum.	Premium income for which credit has been in the revenue account.
Ordinary policies		Rs.	Rs.	Rs.		Rs.	Rs.
In Travancore ...							
Out of Travancore ...							
Total ...							
Annuity Contracts, etc.							
In Travancore ...							
Out of Travancore ...							
Total ...							
Group Insurance policies							
In Travancore ...							
Out of Travancore ...							
Total ...							

The amount should be stated to the nearest Ruppee and after deduction of Re Insurances.

FORM DDD.

Additions to and deductions from policies of the Company for the year ending 19 .

	Ordinary life insurance policies insuring money to be paid on death or survivance.			Annuities.	
	No.	Sum assured.	Reversionary bonus additions.	No.	Annuity per annum.
		Rs.	Rs.		Rs.
(1) Policies at beginning of year ...					
(2) New policies issued ...					
(3) Old policies revived ...					
(4) Old policies changed and increased ...					
(5) Bonus additions alloted ...					
Total ...					
Discontinued during year.					
(6) By death ...					
(7) By survivance or the happening of the contingencies insured against other than death ...					
(8) By expiry of term under temporary insurances ...					
(9) By surrender of policy ...					
(10) By surrender of bonus ...					
(11) By forfeiture or lapse ..					
(12) By change and decrease ...					
(13) By being not taken up ...					
Total discontinued ...					
Total existing at end of year...					

FORM DDDD.

Particulars of the policies forfeited or lapsed in the last financial year under review, less those revised and reinstated for full benefits, classified according to the year in which they were issued.

Financial year in which the policies were issued.	Number of policies forfeited or lapsed.	Sum insured under policies forfeited or lapsed.
		Rs.
Year ending 19, being the year under review ...	...	...
Year ending 19, being the year previous to that under review ...	...	...

And so on, the number of and sum insured under policies forfeited or lapsed in the last financial year under review being stated after classification according to each of the preceding years in which they were issued.

A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted.

Insurers having their principal place of business in Travancore shall give the information required in the form separately for business transacted in Travancore and business transacted outside Travancore and the insurers having their principal place of business outside Travancore will furnish information regarding business transacted in Travancore only.

FORM E.

Form of Revenue Account applicable to Marine Insurance Business.

Revenue Account of for the year ended 19 .
in respect of Marine Insurance Business.

	Current year.	Last preceding year.	Previous years	Total		Curent year.	Last preceding year.	Previous year.	Total
	Rs.	Rs.	Rs.	Rs		Rs.	Rs.	Rs.	Rs.
* Claims paid (less salvages and Re-insurances) (a) (c)					Balance of Marine Insurance Business Account at begining of the year.				
* Commission ...					Balances ...				
* Expenses of Management (b) ..					Additional Reserve (if any). ...				
Bad Debts ...					* Premiums (less Returns, Reinsurances, Brokerages and Discount (c).				
United Kingdom British Indian Dominion and Foreign Taxes					Interest, Dividends and Rents ....Rs- Less—Income-tax thereon ....Rs.				
* Other expenditure (to be specified)					* Other income (to be specified) (d)				
Profit transferred to Profit and Loss Account.					Loss transferred to profit and loss account.				
Balance of Marine Insurance business Account at end of year as shown in the Balance sheet.					Transferred from appropriation Account.				
Balance ...									
Additional Reserve (if any).									

Notes.

(a) This heading must include all expenses directly incurred in settling claims.

(b) If in any year the claims actually paid and those still unpaid at the end of that year in respect of the previous year or years are in excess of the amount included in the previous years' Revenue Account as provision for outstanding claims, then the amount of such excess must be shown in the Revenue Account.

(c) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately.

(d) Where the account is furnished under the provisions of section 11 of the Insurance Act 11—, separate figures for claims paid to claimants in Travancore and claimants outside Travancore and for premiums derived from business effected in Travancore and effected outside Travancore must be given.

(e) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside Travancore shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

* Where the account is furnished under the provisions of clause (b) of sub section (2) of section 16 of the Insurance Act 11—, by an insurer to whom that section applies, separate figures for business within Travancore and business out of Travancore must be given against the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.

FORM F.

Form of Revenue Account Applicable to Fire Insurance Business and to Accident and Miscellaneous Insurance Business including employers liability insurance and Motor Vehicle Insurance Business

Revenue Account of for the year ended 19 .
in respect of Business.

*Claims under Policies less Re-insurances (a) (d) :	Rs.	Balance of Account at beginning of the year:	Rs.
Paid during the year... Rs.		Reserve for Unexpired Risks Rs.	
Total estimated liability in respect of outstanding claims at end of the year whether due or intimated ...		Additional Reserve ; if any ... Rs.	
Total ...		*Premiums, less Re. insurances (d)	
Less—Outstanding tend of previous year (b) Rs.		Interests, Dividents and Rents. Rs.	
*Commission ...		Less—Income-tax thereon. Rs.	
*Expenses of Management (c)			
*Bad Debets ...		*Other Income (to be specified) (e).	
Foreign Taxes ...			
*Other Expenditure (to be specified)		Loss transferred to profit and Loss Account.	
Profit transferred to Profit and Loss Account ...			
Balance of Account at the end of the year as in the Balance-sheet: ... Rs.		Transferred from Appropriation Account.	
Reserve for Unexpired Risks, being—per cent of premium income of year... Rs.			
Additional Reserve (if any) Rs.			
Rs....		Rs.	

NOTES.

(a) This heading must include all expenses directly incurred in settling claims.

(b) If in any year the claims actually paid and those still unpaid at the end of that year in respect of the previous year or years are in excess of the amount included in the previous year's Revenue, Account as provision for outstanding claims, then the amount of such excess must be shown in the Revenue Account.

(c) if any sum have been deducted from this item and entered on the assets side of the balance sheet the amount so deducted must be shown separately.

(d) Where the account is furnished under the provisions of section II of the Insurance Regulation II , separate figures for claims paid to claimants in Travancore and claimants outside Travancore, and for premiums derived from business effected in Travancore and effected outside Travancore must be given.

(e) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside Travancore shall also be shewn separately in the revenue account except such sums as properly appertain to the capital account

*Where the account is furnished under the provisions of clause (b) of sub section (2) of section 16 of the Insurance Regulation II , by an insurer to whom that section applies, separate figures for business within Travancore and business out of Travancore must be given against the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.

THE FOURTH SCHEDULE.

(SEE SECTION 13)

Regulations for the preparation of Abstracts of Actuaries' reports and requirements applicable to such Abstracts.

PART I REGULATIONS.

1. Abstracts and Statements must be so arranged that the numbers and letters of the paragraphs correspond with those of the paragraphs of Part II of this Schedule.

2. In showing the proportion which that part of the annual premiums reserved as a provision for future expenses and profits hears to the total of the annual premiums, in accordance with the requirements of paragraph 3 of Part II of this Schedule, no credit is to be taken for any adjustments made in order to secure that no policy is treated as an asset.

3. (1) The average, rate of interest yielded in any year by the assets constituting a life insurance fund shall, for the purposes of paragraph 4 of Part II of this Schedule, be calculated by dividing the interest of the year by the mean fund of the year; and for the purposes of any such calculation the interest of the year shall be taken to be the whole of the interest credited to the life insurance fund during the year after deduction of income-tax charged thereon (any refund af income-tax in respect of expenses of management made during the year being taken into account), and the mean fund of the year shall be ascertained by adding a sum equal to one-half of the amount of the life insurance fund at the beginning of the year to a sum equal to one-half of that fund at the end of the year, and deducting from the aggregate of those two sums an amount equal to one-half of the interest of the year.

(2) For the purposes of the calculation aforesaid either—

(a) all profits and income arising during the year from some invested in reversions shall be included in the interest credited to the life insurance fund during the year; or

(b) such portion of the life insurance fund as is invested in the purchase of reversions, and the profits and income arising therefrom, shall be excluded from the calculation; but in that case a statement must be added to the information required under the said paragraph 4, showing in respect of the portion of the fund so excluded as aforesaid the average rate of annual profit and income for which credit has been taken during the five years last preceding the valuation date, and explaining the manner in which the said average rate has been calculated.

(3) The information given in accordance with the requirement of the said paragraph 4, shall show clearly by which of the methods hereinbefore in this regulation mentioned the sums invested in reversion and the profits and income arising therefrom have been dealt with.

(4) Every abstract prepared in accordance with the requirements of Part II of this Schedule shall be signed by an actuary and

shall contain a certificate by him to the effect that he has satisfied himself as to the accuracy of the valuations made for the purposes thereof and of the valuation data.

Provided that in the case of an abstract prepared on behalf of an insurance company, if the actuary who signs the abstract is not a permanent officer of the company, the certificate as to the accuracy of the valuation data shall be given and signed by the principal officer of the company and the actuary shall include in the abstract a statement signed by him showing what precautions he has taken to ensure the accuracy of the data.

5. For the purposes of the Schedule the following expressions have the meanings hereby respectively assigned to them namely :—

"extra premium" means, a charge for any risk not provided for in the minimum contract premium;

"inter-valuation period" means, as respects any valuation, the period to the valuation date of that valuation from the valuation date of the last preceding valuation in connection with which an abstract was prepared under this Regulation or, in a case where no such valuation has been made in respect of the class of business in question, from the date on which the insurer began to carry on that class of business;

"maturity date" means the fixed date on which any benefit will become payable either absolutely or contingently;

"net premiums" means as respects any valuation the premiums taken credit for in the valuation;

"premium term" means the period during which premiums are payable;

"valuation date" means as respects any valuation the date as at which the valuation is made.

PART II.

Requirements applicable to an Abstract in respect of Life Insurance Business.

The following tabular statements shall be annexed to every abstract prepared in accordance with the requirements of this Part of this Schedule, namely :—

(*a*) a Consolidated Revenue Account, in the Form G annexed to this Part of this Schedule, for the inter-valuation period (except that it shall not be necessary to prepare such an account in respect of any class of business so long as the insurer deposits annually with the Registrar an abstract in respect of that class of business); and

(b) a summary and Valuation in the Form H annexed to this Part of this Schedule of the policies included at the valuation date in the class of business to which the abstract relates; and

(c) a Valuation Balance-sheet in the Form I annexed to this Part of this Schedule; and

(d) a statement in Form D D D as set forth in Part II of the Third Schedule of the addition to and deductions from the number of policies and the sums insured thereunder for each class of life insurance; and

(e) a statement in Form D D D D as set forth in Part II of the Third Schedule of particulars of policies forfeited or lapsed under each class of life insurance; and every such abstract shall show—

1. The valuation date;

2. The general principles and full details of the methods adopted in the valuation of each of the various classes of insurances and annuities shown in the said Form H, including statements on the following points:—

(a) whether the principles were determined by the instruments constituting the company or by its regulations or byelaws or how otherwise;

(b) the method by which the net premiums have been arrived at and how the ages at entry, premium terms and matuirty dates have been treated for the purpose of the valuation;

(c) the methods by which the valuation age, period from the valuation date to the maturity date, and the future premium terms, have been treated for the purpose of the valuation;

(d) the rate of bonus taken into account whereby the method of valuation difinite provision is made for the maintenance of a specific rate of bonus;

(e) the method of allowing for—

(i) the incidence of the premium income; and

(ii) Premiums payable otherwise than annually.

(f) the methods by which premium has been made for the following matters *viz.*,

(i) the immediate payment of claims;

(ii) future expenses and profits in the case of limited payment and paid-up policies;

(iii) the reserve in respect of lapsed policies, not included in the valuation, but under which a liability exists or may arise; and whether any reserves have been made for the matters aforesaid;

(g) whether under the valuation method adopted any policy would be treated as an asset, and if so what steps, if any, have been taken to eliminate such asset;

(h) a statement of the manner in which policies on under-average lives and policies subject to permiums which include a charge for climatic, military or other extra risks have been delt with; and

(i) the rates of exchange at which liablilities in respect of policies issued in foreign currencies have been converted into rupees and what provisions has been made for possible increase of liability arising from future variations in the rates of exchange.

3. The table of mortality used, and the rate of interest assumed in the valuation.

4. The proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears, to the total of the annual premiums, separately specified in respect of insurances with immediate profits, with deferred profits, with profits under discounted bonus system, and without profits.

5. The average rates of interest yielded by the assets, whether invested or uninvested, constituting the life insurance fund for each of the years covered by the valuation date.

6. The basis adopted in the distribution of profits as between the insurer and policy-holders, and whether such basis was determined by the instruments constituting the company, or by its regulations or bye-laws, or how otherwise.

7. The general principles adopted in the distribution of profits among policy-holders including statements on the following points, namely:—

(a) whether the principles were determined by the instruments constituting the company, or by its regulations or bye-laws, or how otherwise;

(b) the number of years' premiums to be paid, period to elapse and other conditions to be fulfilled before a bonus is allotted;

(c) whether the bonus is allotted in respect of each year's premium paid, or in respect of each completed calendar year of year of assurance or how otherwise; and

(d) whether the bonus vests immediately on allocation, or, if not, the conditions of vesting.

8. (1) The total amount of profits arising during the inter-valuation period, including profits paid away and sums transferred to reserve funds or other accounts during that period, and the amount brought forward from the preceding valuation (to be stated separately) and the allocation of such profits—

(a) to interim bonus paid;
(b) among policy-holders with immediate participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses);
(c) among policy-holders with deferred participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses);
(d) among policy-holders in the discounted bonus class, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses);
(e) to the insurer, or in the case of an insurance company, among share-holders or to share holders' accounts (any such sums passed through the accounts during the inter-valuation period to be separately stated);
(f) to every reserve fund or other fund or account (any such sums passed through the accounts during the inter-valuation period to be separately stated); and
(g) as carried forward unappropriated.

(2) Specimens of bonuses allotted as at the valuation date to pocicies for one thousand rupees—
(a) for the whole term of life effected at the respective ages of 20, 30 and 40 and having been in force respectively for five years, ten years and upwards at intervals of ten years'; and
(b) for endowment insurances effected at the respective ages of 20, 30 and 40, for endowment terms of fifteen, twenty and thirty years, and having been in force respectively for five years, ten years and upwards at intervals of ten years; together with the amounts apportioned under the various manners in which the bonus is receivable.

9. A statement in Form J annexed to this Part of this Schedule of specimen policy reserve values held or required to be held according to the methods adopted in the valuation, and specimen minimum surrender values in respect of whole life insurance policies for Rs. 1,000 with premiums payable throughout life effected at the respective ages of 20, 30, 40 and 50, and immediately on payment of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, fifteenth and twentieth annual premium with similar specimen policy reserve values and specimen surrender values in respect of whole life insurance policies subject to premiums payable for 20 years and of endowment insurance policies maturing at age 55.

10. A statement showing how the liability under any disability clause in a policy has been determined in the valuation with full information of the tables of sickness or accident used for the purpose.

FORM G.

Consolidated Revenue Account of......... for ......year commencing and ending ....

	Business within Travancore.	Total.		Business within Travancore.	Total.
	Rs.			Rs.	
Claims under Policies (including provision for claims due or intimated) less Re-insurances.			Balance of Life Insurance Fund at the beginning of the period.		
By death.					
By maturity.			Premiums, less Re-insurances.		
Annuities, less Re-insurances.			Consideration for Annuities granted less Re-insurances (b)		
Surrenders (including Surrenders of Bonuses), less Re-insurances					
Bonuses in cash, less Re-insurances.			Interest, dividends and rents.		
Bonuses in reduction of Premiums, less Re-insurances.					
Commission (less that on Re-insurances.			Less income-tax thereon (c)		
Expenses of management (a) Agents' and Canvassers' allowance.					
Salaries etc, (other than to Agents and Canvassers).					
Travelling expenses.					
Director's fees.					
Auditor's fees.					
Medical fees.					
Law charges.					
Advertising, Printing and Stationery.					
Other expenses of management (accounts to be specified).			Registration fees.		

FORM G.

Consolidated Revenue Account of.........for......year commencing and ending..............

	Business within Travancore.	Total.		Business within Travancore.	Total.
Other payments (accounts to be specified.)	Rs.			Rs.	
Rents for offices belonging to and occupied by the company.					
Rents of other offices occupied by the company.			Other income (to be specified).		
Travancore and Foreign taxes bad debts.			Loss transferred to Profit and Loss Account.		
Other expenditure (to be specified).					
Profit transferred to Profit and Loss Account.					
Balance of Life Insurance Fund at the end of the period as shown in the balance-sheet.			Transferred from Appropriation Account.		

Notes :

(a) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately.

(b) All single premiums for annuities, whether immediate or deferred, must be included under this heading.

(c) Travancore and Foreign income-tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recovered from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for Travancore and Foreign taxes, other than those shown under this item.

(d) In the case of an insurer having his principal place of business outside Travancore expenses of management for the total business need not be split up in the several sub-heads, if they are not so split up in his own country.

FORM H.

Summary and valuation of the policies of ......as at ...19 .

Description of Transactions.	Particulars of the Policies for valuation.					Valuation.			
	Number of policies.	Sums Assured.	Bonuses.	Office yearly premiums.	Net yearly premiums	Sums assured and Bonus.	Office yearly premium.	Net yearly premiums.	Net Liabilities.
DIVISION I.—INSURANCES.									
Group A.									
With immediate participation in profits									
For whole term of life office									
Other classes (to be specified)									
Extra premiums									
Total Insurances									
Deduct—Re-insurances									
Net insurances									
Group B.									
With deferred participation in profits									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total Insurances									
Deduct—Re-insurances									
Net insurances									
Group C.									
Under discounted bonus systems									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total Insurances									
Deduct—Re-in urances									
Net insurances									
Total insurances with profit									
Group D.									
Without participation in profits									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total insurances									
Deduct—Re-insurances									
Net insurances									

FORMS H.—(*contd.*)

Description of Transactions.	Particulars of the policies for valuation.					Valuation.			
	Number of policies.	Sums Assured.	Bonuses.	Office yearly premiums.	Net yearly premiums.	Sums assured and Bonus.	Office yearly premiums	Net yearly premiums.	Net Liabilities.
Group D.—(*concld.*)									
Total insurances without profits .									
Total of the insurances shown in all groups .									
Deduct Re-insurances .									
Net amount of insurances .									
Adjustment, if any (to be separately specified) .									
DIVISION II.—ANNUITIES OF LIVES.									
Immediate Annuities .									
Deferred Annuities with return of premiums .									
Deferred Annuities without returns of premiums .									
Other classes (to be specified) .									
Total annuities .									
Deduct—Re insurances .									
Net annuities on lives .									
Total of the results (after deduction of Re-insurances) .									

Notes.

1. Item in this Summary are to be stated to the nearest rupee.

2. No policy of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, is to be included in Group A, B, C or D of this Form : any such policies must be shown in a separate Group which must be added to the Form.

3. If policies without participation in profits but with a guaranteed rate of bonus are issued they must be separately specified in Group D of this Form.

4. Policies under which there is a waiver of premiums during disability must be shown as a separate class.

5. Separate forms must be prepared in respect of classes of policies valued by different tables of mortality or at different rates of interest or involving the valuation of net premiums on different bases.

6. In cases where separate valuations of any portion of the business are required under local laws in places outside Travancore and reserves based on such valuations are deposited in places, a statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums, and the total net liability on the bases as to mortality and interest adopted in each such place with a statement as to such bases respectively.

7. Office and net premiums and the values thereof must be shown after deduction of abatements made by the application of bonus.

FORM I.

Valuation Balance-sheet of as at 18.

Net liability under business as shown in the Summary and Valuation of policies.	Rs.	Balance of life Insurance Fund as shown in the Balance sheet.	Rs.
Surplus, if any.		Deficiency, if any.	

NOTE If the proportion of surplus allocated to the insurer or in the case of an insurance company to share-holders, is not uniform in respect of all classes of insurances, the surplus must be shown separately for the classes to which the different proportions relate.

FORM J.

Specimen policy reserve values and minimum surrender values under a policy for Rs. 1,000.

Number of premiums paid.	Age at entry 20.		Age at entry 30.		Age at entry 40.		Age at entry 50.	
	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.
1								
2								
3								
4								
5								
7								
8								
9								
10								
15								
20								

NOTE:—Items in this Form to be stated to the nearest rupee.

THE FIFTH SCHEDULE.

(See section 13)

Regulations for preparing statements of business in force and requirements applicable to such statements.

PART I—REGULATIONS.

1. Statements prepared under this Schedule must be prepared so far as practicable, in tabular form and must be indentified by numbers and letters corresponding with those of the paragraphs of Part II of this Schedule.

2. Except with respect to rates of premium or contribution items in statements prepared under this Schedule are to be shown to the nearest rupee.

3. Extra premium shown in the forms of Summary and Valuation prepared under the Fourth Schedule to this Regulation must not be included in statements prepared under this Schedule.

4. Every statement prepared under this Schedule shall be signed by the Actuary making the investigation in connection with which it is prepared.

5. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely—

(*a*) "Annual loading" means the provision made for future expenses and profits;

(*b*) "Extra premiums" means a charge for any risk not provided for in the minimum contract premium;

(*c*) "Net premiums" means the premiums taken credit for in the valuation in connection with which any statement is prepared; and

(*d*) "Valuation date" means as respects any valuation the date as at which the valuation is made.

PART II—REQUIREMENTS FOR STATEMENNS APPLICABLE TO LIFE INSURANCE BUSINESS.

The statements required to be prepared under this Part of this Schedule are as follows namely:—

1. Statements, separately prepared in respect of policies with and without participation in profits showing—

(*a*) as respects policies for the whole term of life, the rates of office premiums charged, in accordance with the published tables in use, for new policies giving the rates for decennial ages at entry from 20 to 70 inclusive; and

(*b*) as respects endownment insurance policies, the rates of office premiums charged, in accordance with the published tables in use, for new policies with original terms of ten, fifteen, twenty, thirty and forty years, giving the rates for decennial ages at entry from 20 to 40 inclusive, but excluding policies under which the age at maturity exceeds 60.

2. Statements, separately prepared in respect of policies with immediate profits, with deferred profits under discounted bonus systems. and without profits, showing in quinquennial groups—

(a) as respects policies for the whole term of life—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately) grouped according to ages attained ;

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable throughout life, and of the corresponding net premiums, grouped according to ages attained ; and

(iii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable for a limited number of years, and, either, the corresponding net premiums grouped in accordance with the grouping adopted for the purposes of the valuation, or, the annual loading reserved for the remaining duration of the policies grouped according to ages attained ;

(b) as respects endowment insurance policies—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately, grouped in accordance with the grouping adopted for the purposes of the valuation ; and

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable, and of the corresponding net premiums grouped in accordance with the grouping adopted for the purposes of the valuation :

Provided that—

(a) as respects endowment insurance policies which will reach maturity in less than five years, the information required by sub-paragraph (b) (i) of this paragraph must be given for each year instead of in quinquennial groups ; and

(b) where the office premiums payable under policies for the whole time of life for a limited number of years, or the office premiums payable under endowment insurance policies, or the corresponding net premiums, are grouped for the purpose of the valuation otherwise than according to the number of years payments remaining to be made, or, where the sums assured under endowment insurance policies are grouped for the purposes of the valuation otherwise than according to the years in which the policies will mature for payment or in which they are assumed to mature if earlier than the true year, then, in any such case the valuation constants and an explanation of, the method by which they are calculated must be given for each group

and in the case of the sums assured under endowment insurance policies a statement must also be given of the amount assured maturing for payment in each of the two years following the valuation date.

3. Statements as respects any policies in force under which premiums cease to be payable, whether permanently or temporarily during disability arising from sickness or accident, showing the total amount of the office premiums payable.

4. Statements as respects immediate annuities on single lives for the whole term of life, separately prepared in respect of annuities on male and female lives, showing in quinquennial age groups the total amount of such annuities.

5. Statements as respects deferred annuities, separately prepared in respect of annuities on male and female lives, showing the specimen reserve values for annuities of one hundred rupees which will be produced on maturity on the basis of valuation adopted at ages, in the case of male lives, 60 and 65 and in the case of female lives, 55 and 60; the said statements must show the specimen reserve values which will be produced under the table of annual premiums in use for new policies, and if under any other table of annual premiums in use for any other deferred annuity policies in force smaller reserve value will be produced the like specimens of these must also be given.

6. Statements as respects any policies of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, showing the total claims paid since the date as at which the last statements were prepared under this Part of this Shedule or, where no such statemens have been prepared, since the date on which the insurer began to carry on the class of business to which the statements relate, and the reserves for unexpired risks and outstanding claims.

THE SIXTH SCHEDULE.

(SEE SECTION 55).

Rules as to the valuation of the liabilities of an Insurer in Insolvency or Liquidation.

The liabilities of an insurer in respect of current contracts effected in the course of life insurance business including annuity business, shall be calculated by the method and upon the basis to be determined by an Actuary approved by the Court, and the Actuary so approved shall, in determining as aforesaid, take into account :—

(a) the purpose for which valuation is to be made.

(b) the rate of interest and the rates of mortality and sickness to be used in valuation ; and

(c) any special directions which may be given by the Court. The liabilities of an insurer in respect of current policies other than life policies shall be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

Statement of Objects and Reasons.

The law relating to insurance in Travancore is contained in the Provident Insurance Societies Regulation (Regulation III of 1108) and the Life Assurance Companies Regulation (Regulation IV of 1112), but these deal only with the life insurance business which is but one amongst the several classes of insurance business carried on in the State. The absence of a Statute dealing with all kinds of insurance has been keenly felt by the insuring public.

2. In the actual working of the Life Assurance Companies Regulation certain defects have been noticed. While making it obligatory on Insurance Companies formed in Travancore to register themselves under the Regulation and to make heavy deposits, British and British Indian Companies that do the real insurance business are entitled to exemption from registration and deposit if they make a declaration of their nationality. So far no company has taken out registration under the Regulation, the reason being that there is no insurance company incorporated in Travancore. The consequence is that insurance business is still without adequate State control. It is in the interest of policy-holders that some kind of supervision and control by the State is maintained. Policy-holders who make payment in Travancore are very often put to the necessity of enforcing their claims in foreign courts. Protection for insurance agents as well as protection against the unscrupulous amongst them has become necessary in the interest of both the insurer and the insured. The existing law relating to nomination assignment and lapsing of policies requires better definiteness and certainity.

3. The bulk of the business carried on by Provident Insurance Societies is found to be on the dividing system which has been condemned as unscientific and unworkable. Though the few that have survived the stringent provisions of the Provident Insurance Societies Regulation of 1108 are reported to be doing good business, it is necessary at one time or other either to stop it or to put it on actuarially sound basis. As years go by and volume of business increase even the best society, in spite of its maximum deposit of Rs. 25,000 may not be in a position to meet all the demands. Though Travancore Provident Insurance Societies are considered by reason of the elaborate provisions of the Statue under which they are working, to stand on a better footing than similar societies working in British India and elsewhere, it is necessary in the interest of the insuring public that they should be prohibited from carrying on actuarially unsound schemes.

4. The present Bill has therefore been drawn up mainly to meet the above demands and for providing for various other equally important matters. This Bill follows mainly the British Indian Insurance Act (Act IV of 1938) with appropriate changes to suit local conditions.

5. The main features of the Bill are—

(1) The registration of all concerns transacting insurance business of whatever kind in Travancore;

(2) requirement of an initial deposit and sufficient working capital with a view to eliminate mushroom companies;

(3) full disclosure of the information required to insure sound principles of finance and management;

(4) restrictions in regard to investment of funds and periodical actuarial valuations;

(5) licensing of agents to provide check over persons who are responsible for bringing about the policy contracts;

(6) prohibition of business on the dividing principle;

(7) prohibition of employment of managing agents:

(8) provision for right of suit in Travancore by policy-holders;

(2)prtection of policy-holders from evasion of payment of moneys due under a policy on technical grounds;

(10) a separate chapter dealing with provident insurance societies providing for actuarial examination of every new scheme and an equitable conversion of existing policies; and

(11) another chapter dealing with special rules for mutual Insurance Societies and Co-operative Insurance Societies.

S. KRISHNA PILLAI,
Legal Rememberancer to Government.

Annexure I.

R. O. C. No. 112/39/Legislative.

The following Bill, together with the Statement of Objects and Reasons is published as ordered by the Dewan, Under Rule 31 of the Travancore Legislative Rules.

(By order)

Huzur Cutcherry, M. K. NILAKANTA AIYAR,

Trivandrum, 23rd January 1939. Ag. *Chief Secretary to Government.*

THE TRAVANCORE CONTRACT BILL.

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A BILL TO DEFINE AND AMEND THE LAW RELATING TO CONTRACTS.

Preamble.

Whereas it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Travancore Contract Act, 11 ."

Extent, commencement.

It extends to the whole of Travancore; and it shall come into force at once.

Savings

Nothing herein contained shall affect the provisions of any Act not hereby expressly repealed, nor any usage or custom or trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Interpretation clause.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;

(c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee".

(d) When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise;

(e) Every promise and every set of promise, forming the consideration for each other, is an agreement;

(f) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;

(g) An agreement not enforceable by law is said to be void;

(h) An agreement enforceable by law is a contract;

(i) An agreemen-which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

Communication, acceptance and revocation of proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Communication when complete.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete:

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Illustration.

(*a*) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

(*b*) B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete,—

as against A, when the letter is posted;

as against B, when the letter is received by A.

(*c*) A revokes his proposal by telegram. The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked:

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified ;

(2) be expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and otherwise ; but if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, is receiving consideration.

8. Performance of the conditions of a proposal, or acceptance of any the consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal, or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

What agreements are contracts.

10. All agreements are contracts if they are made by the free consent o parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in Travancore and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject; and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. A person is said to be of unsound mind for the purpose of making a contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(*a*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b*) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent" defined

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined.

14. Consent is said to be free when it is not caused by—

(1) coercion, as defined in Section 15, or
(2) undue influence, as defined in Section 16, or
(3) fraud, as defined in Section 17, or
(4) misrepresentation, as defined in Section 18, or
(5) mistake, subject to the provisions of Sections 21, 22 and 23.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

Coercion defined.

15. "Coercion" is the committing or threatening to commit, any act forbidden by the Travancore Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Travancore Penal Code is or is not in force in the place where the coercion is employed.

Illustrations.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Travancore Penal Code.

Aafterwards sues B for breach of contract at Trivandrum.

A has employed coercion, although his act is not an offence by the law of England, and although Section 509 of the Travancore Penal Code was not in force at the time when or place where the act was done.

"Undue influence" defined.

16. (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will or the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Illustrations.

(*a*) A having advanced money to his son B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance, A employs undue influence,

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendent, to agree to pay B an unreasonable sum for his professional services. B employs under influence.

(c) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A aplies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by urdue influence.

"Fraud" defined.

17. "Fraud" means and includes any of the following acts committed by a party to a contract or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

(1) the suggestion as a fact, of that which is not true by one who does not believe it to be true ;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it ;

(4) any other act fitted to deceive ;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingnes, of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not 'fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A—"If you do not deny it, I shall assume that the horse is sound". A says nothing. Here, A's silence is equivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true ;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him ;

(3) Causing however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject to the agreement.

19. When consent to an agreement is caused by coercions, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Voidability of agreements without free consent.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of Section 17 the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. A contract is voidable at the option of B.

(*b*) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(*c*) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.

(*d*) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an undervalue. The contract is voidable at the option of A.

(*e*) A is entitled to succeed to an estate at the death of B; B dies; C having received inteligence of B's death, prevents the inteligence teaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

20. When consent to an agreement is caused by undue influence the agreement is a contract voidable at the option of the party whose consent was so caused.

Power to set aside contract induced by undue influence.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a money-lender advances Rs. 100 to B, an agriculturist, and, by undue influence induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside ordering B to repay the Rs. 100 with such interest as may seem just.

Agreement void where both parties are under mistake as to matter of fact.

21. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(*a*) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Travancore. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(*b*) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain though neither party was aware of the fact The agreement is void.

(*c*) A, being entitled to an estate for the life of B, agree to sell it to C. B. was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Effect of mistakes as to law.

22. A contract is not voidable because it was caused by a mistake as to any law in force in Travancore but a mistake as to any law not in force in Travancore has the same effect as a mistake of fact.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Travancore Law of Limitation: the contract is not voidable.

Contract caused by mistake of one part as to matter of fact.

23. A contract is not voidable merely because it was caused by one of the paties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful and what not.

24. The consideration or object of an agreement is lawful, unless it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent: or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(*a*) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees. is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(*b*) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of other party and they are lawful considerations.

(*c*) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise and these are lawful considerations.

(*d*) A promises to maintain B's shild and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the pcomise of the other party. They are lawful considerations.

(*e*) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired by them by fraud. The agreement is void, as its object is unlawful.

(*f*) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(*g*) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement betwen A and B is void, as it implies a fraud by concealment by A on his principal.

(*h*) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(*i*) A's estate is sold for arrears of revenue under the provisions of an Act, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(*j*) A, who is B's muktiar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(*k*) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Travancore Penal Code.

VOID AGREEMENTS.

Agreements void if considerations and objects unlawful in part.

25. If any part of a single consideration for one or more objects, or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

26. An agreement made without consideration is void, unless—

Agreement without consideration void unless it is in writing and registered.

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other, or unless,

Or is a promise to compensate for something done.

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do, or unless,

Or is a promise to pay a debt, barred by limitation law.

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation I. Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2. An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determing the question whether the consent of the promisor was freely given.

Illustrations.

(*a*) A promises, for no consideration, to give to B. Rs. 1,000 This is a void agreement.

(*b*) A, for natural love and affection, promises to give his son, B. Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(*c*) A find B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d*) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(*e*) A owes B Rs 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay B, Rs. 500 on account of the debt. This is a contract.

(*f*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

27. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement in restraint of trade void.

28. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception :—One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein; Provided that such limits appear to to Court reasonable, regard being had to the nature of the business.

Saving of agreement not to carry on business of which goodwill is sold.

29. Every agreement, by which any party thereto is aestricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Agreement in restraint of legal proceedings void.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Svings of contrac to refer to arbitration dispute that may arise.

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Savings of contract to refer questions that have already arisen.

30. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Agreement void for uncertainty.

Illustrations.

(*a*) A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b*) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(*c*) A, who is a dealer in coconnut oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut oil.

(*d*) A agrees to sell to B "all the grain in my granary at Trivandrum". There is no uncertainty here to make the agreement void.

(*e*) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C". As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(*f*) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

31. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Agreement by way of wager void.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race.

Exception in favour of certain prizes for horse racing.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing to which the provisions of Section 293 of the Travancore Penal Code apply.

Section 293 of the Travancore Penal Code not affected.

CHAPTER III.

Of Contingent Contract.

32. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

"Contingent contract" defined.

Illustrations.

A contracts to pay B, Rs. 10,000 if B's house is burnt. This is a contingent contract.

33. Contingent contracts to do or not to do anything if an uncertain furture event happens cannot be enforced by law unless and until that event has happened.

Enforcement of contracts contingent on an event happening.

If the event becomes impossible such contracts become void.

Illustrations.

(*a*) A makes a contract with B to buy B's borse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(*b*) A makes a contract with B to sell horse to B at a specified price, if C to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(*c*) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

34. Contingent contract to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Enforcement of contracts contingent on an event not happening.

Illustrations.

A agrees to pay B a sum of money if a certain ship does not return The ship is sunk. The contract can be enforced when the ship sinks.

35. If the future event on which a contract is contingent is the way in which a Person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

When event on which contract is contingent to be deemed impossible if it is the future conduct of a living person

Illustrations.

A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible although it is possible that D may die and that C may afterwards marry B.

When contracts become void which are contingent on happening of specified event within fixed time.

36 Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations.

(*a*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(*b*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year., or is burnt within the year.

Agreements contingent on impossible events void.

37. Contingent agreements to do or not to do anything, if an impossible event happens, are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations.

(*a*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b*) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

CONTRACTS WHICH MUST BE PERFORMED.

38. The parties to a contract must either perform, or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law.

Obligation of parties to contracts.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations.

(*a*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies before that day. A's representatives are bound to deliver the goods to B and B is bound to pay the Rs. 1,000 to A's representatives.

(*b*) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance.

39. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contracts. Every such offer must fulfil the following conditions:—

(1) It must be unconditional;

(2) It must be made at a proper time and place, and under such circumstances that the person to whom it be made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(3) If the offer is an offer to deliver anything to the promisee the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustrations.

A contracts to deliver to B at his wharehouse, on the 1st March 1939 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's wharehouse on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly.

40. When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance.

Illustrations.

(*a*) A, a singer, enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre, B is at liberty to put an end to the contract.

(*b*) A, a singer, enters into a contract with B, the manager of a theatre to sing at his theatre two nights in every week during the next two months and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night

By whom Contracts must be performed.

Person by whom promise is to be performed.

41. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(*a*) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b*) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person.

42. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.

43. When two or more persons have made a joint promise then unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the representatives of all jointly must fulfil the promise.

Any one of joint promisors may be compelled to perform.

44. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation. Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a*) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b*) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate and 1,250 rupees from B.

(c) A, B and C are under a joint promise to pay D 3,000 rupees, C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint promisor.

45. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution of joint rights.

46. When a person has made a promise to two or more persons jointly then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them, with the representative of such deceased person jointly with the survivor, survivors, and, after the death of the last survivor, with the representatives of all jointly

Illustrations.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time and place for performance.

Time for performance of Promise where no application is to be made and no time is specified.

47. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation. The question "what is a reasonable time" is, in each particular case, a question of fact.

Time and place for performance of promise where time is specified and no application to be made.

48. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place.

49. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question "what is a proper time and place" is, in each particular case, a question of fact.

Place for performance of promise where no application to be made and no place fixed for performance.

50. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

51. The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions.

Illustrations.

(*a*) B owes A 2,000 rupees. A desirs B to pay the amount to A's account with C, a banker B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(*b*) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(*c*) A owes B 2,000 rupees. B accepts some of A's goods in deduction of the debt. The delivery of the goods operates as a part payment.

(*d*) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promiser not bound to perform unless reciprocal promisee ready and willing to perform.

52. When a contract consists of reciprocal promises to be simultaneously performed no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(*a*) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment

(*b*) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promise.

53. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order, and, where the order is not expressly fixed by the contract, they should be performed in that order which the nature of the transaction requires.

Illustrations.

(*a*) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(*b*) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Liability of party preventing event on which contract is to take effect.

54. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustrations.

A and B contract that B shall execute certain work for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.

55. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(*a*) A hires B's ship to take in and convey from Travancore to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(*b*) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber; and the work cannot be executed. A need not execute the work and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(*c*) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(*d*) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time in contract in which time is essential

56. Where a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential

If it was not the intention of the parties that time should be of the essence of the contract the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Agreement to do impossible act.

57. An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable deligence might have have known and which the promisee did not know to be impossible or unlawful, such promissor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(*a*) A agrees with B to discover treasure by magic. The agreement is void.

(*b*) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(*c*) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Reciprocal promises to do things legal and also other things illegal.

58. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal the first set of promises is a contract, but the second is a void agreement.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

Alternative promise, one branch being illegal.

59. In the case of an alternative promise, one branch of which is legal and the other illegal the legal branch alone can be enforced.

Illustration.

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice and void agreement as to the opium.

Appropriation of payments.

Application of payments where debt to be discharged is indicated.

60. Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

(a) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B among other debts, the some of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees This payment is to be applied to the discharge of the debt which B had demanded payment.

Application of payment where debt to be discharged is not indicated.

61. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

62. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. It the debts are of equal standing, the payment shall be applied in discharge of such proportionably.

Application of payment where neither party appropriates.

Contract which need not be performed.

63. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Effect of novation, rescission and alteration of contract.

Illustrations.

(a) A owes money to B under a contract. It is agreed between A, B, and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end and new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

64. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Promisee may dispense with or remit performance of promise.

Illustrations.

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c) A owes B, 5,000 rupees. C pays to B 1,000 rupees, and B accepts them in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d) A owes B under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount

(e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B to pay them a composition of eight annas in the rupee upon their respective demands, Payment to B of 1,000 rupees is a discharge of B's demand.

65. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Consequences of rescission of voidable contract.

66. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Obligation of person who has received advantage under void agreement or contract that becomes void.

Illustration.

(*a*) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b*) A contract with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them.

(*c*) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(*d*) A contracts to sing for B at a concert for 1,000 rupees which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

67. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Mode of communicating or revoking rescission of voidable contract.

68. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Effect of neglect of promise to afford promisor reasonable facilities for performance.

Illustration.

A contracts with B to repair B's house. B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

CHAPTER V.

Of Certain Relations Resembling Those Created by Contract.

62. If a person, incapable of entering into a contract, or any one whom he is legally bound to support is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Claim for necessaries supplied to person incapable of contracting, or on his account.

Illustrations.

(*a*) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(*b*) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

70. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Reimbursement of person paying money due by another in payment of which he is interested.

Illustration.

B holds land, on a lease granted by A, the Zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

71. Where a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benifit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Obligation of person enjoing benefit of non-gratuitous act.

Illustrations.

(*a*) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(*b*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

72. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Responsibility of finder of goods.

73. A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

Illustrations.

(*a*) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b*) A railway company refuses to deliver certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

Compensation for loss or damage caused by breach of contract.

74. When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(*a*) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b*) A hires B's ship to go to Bombay, and there take on board, on the first of January a cargo which A is to provide and to bring it to Travancore, the freight to be paid when earned. B's ship does not go to Bombay but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(*c*) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(*d*) A contracts to buy B's ship for 60,000 rupees but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(*e*) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*f*) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(*g*) A contracts to let his ship to B for a year, from the 1st of January, for a certain price. Freights rise, and on the 1st of January the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(*h*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contact price of the iron and the sum for which A could have obtained and delivered it.

(*i*) A delivers to B, a common carrier, a machine to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contact with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j*) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,000 rupees being the profit which A could have made by the performance of his contract with B.

(*k*) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B

for another, but not the sum paid by B to the third person by way of compensation.

(*l*) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(*m*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(*n*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o*) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B the market price of the first of January, and not the profit which would have arisen to B from the sale to C is to be taken into account.

(*p*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mills.

(*q*) A contracts to sell and deliver to B on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r*) A, a ship-owner, contracts with B to convey him from Travancore to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit one-half of his passage money. The ship does not sail on the first of January, and B, after being in consequence, detained in Travancore for some time, and thereby put to some expense proceeds to Sydney, in another vessel, and, in consequence, arriving too late in Sydney loses a sum of money. A is liable to repay to B his deposit with interest, and the expense to which he is put by his detention in Travancore and the excess, if any, of the passage money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

75. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Compensation for breach of contract where penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception. – When any person enters into any bail-bond, recognizance or other instrument of the same nature, or under the provisions of any law, or under the orders of the Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are intesested.

Illustrations.

(*a*) A contracts with B to pay B Rs. 1000 if he fails to pay B Rs. 500 on a given day. A fails to pay B. Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1000 as the Court considers reasonable.

(*b*) A contracts with B that, if A practises as a surgeon within Travancore he will pay B. Rs. 5000. A practises as a surgeon in Travancore. B is entitled to such compensation, not exceeding Rs. 5000 as the Court considers reasonable.

(*c*) A gives a recognizance binding him in a penalty of Rs. 500, to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(*d*) A gives B a bond for the repayment of Rs. 1000 with interest at 12 per cent. at the end of six months., with a stipulation that in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(*e*) A, who owes money to B, a money-lender undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulate date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1000 by five equal monthly instalments with a stipulation that in default of payment of any instalment the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

76. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Party rightfully rescinding contract entitled to compensation.

Illustration.

A, a singer contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months; and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.

OF INDEMNITY AND GUARANTEE.

77. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

Contract of indemnity defined.

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

78. The promisee in a contract of indemnity acting within the scope of his authority, is entitled to recover from the promisor.

Rights of indemnity-holder when sued.

(1) All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnity applies;

(2) All costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

(3) All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

79. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor." A guarantee may be either oral or written.

"Contract of guarantee" 'surety' "principal debtor" "and creditor."

80. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Consideration for guarantee.

Illustrations.

(*a*) B requests A to sell and deliver to him goods on credit. A agrees to do so provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(*b*) A sells and delivers goods to B. C, afterwards requests A to forbear to sue B for the debt for a year and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(*c*) A sells and delivers goods to B. C, afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

81. The liability of the surety is coextensive with that of the principal debtor, unless, it is otherwise provided by the contract.

Surety's liability.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

82. A guarantee which extends to a series of transactions is called a "continuing guarantee".

Continuing guarantee

Illustrations.

(*a*) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(*b*) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(*c*) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

83. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor

Revocation of continuing guarantee.

Illustrations.

(*a*) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payments of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the 2,000 rupees, on default of C.

(b) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him, B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the Bill at maturity. A is liable upon his guarantee.

84. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Revocation of continuing guarantee by surety's death.

85. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Liability of two persons, primarily liable not effected by arrangement between them that one shall be surety on other's default.

Illustration.

A and B make a joint and several promisory note to C. A makes it in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

86. Any variance, made without the surety's consent, in the terms of the contract between the Principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

Discharge of surety by variance in terms of contract.

Illustrations.

(a) A becomes surety to C for B's conduct as a manager in C's Bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the Bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantee C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defind by a Act By a subsequent Act the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied in as much as C might sue B for the money before the 1st March.

87. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Discharge of surety by release or discharge of principal debtor

Illustrations.

(a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

88. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Discharge of surety when creditor compounds with, gives time to or agrees not to sue, principal debtor.

89. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Surety not discharged when agreement made with third person to give time to principal debtor.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

90. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the security.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

91. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Release of one co-surety does not discharge others.

92. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act of omission impairing surety's eventual remedy.

Illustrations.

(*a*) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(*b*) C lends money to B on the security of a joint and several promissory note made in C's favour by B and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realised. A is discharged from liability on the note.

(*c*) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

93. Where a guaranteed debt has become due or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Rights of surety on payment or performance.

94. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses or, without the consent of the surety, parts with such security the surety is discharged to the value of the security.

Surety's right to benefit of creditors securities.

Illustrations.

(*a*) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(*b*) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree and then, without the knowledge of A, withdraws the execution. A is discharged.

(*c*) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee obtained by misrepresentation invalid.

95 Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invaild.

Guarantee obtained by concealment invalid.

96. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Illustrations.

(*a*) A engages B a clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(*b*) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price. Such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

Guarantee on contract that creditor shall not act on it until co-surety joins.

97. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied promise to indemnify surety.

98. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(*a*) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A not having reasonable grounds for so doing, defends the suit and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2000 rupees in respect of the rice supplied A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

99 Where two or more persons are co-sureties for the same debt or duty either jointly or severally, and whether under the same of different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable as between themselves to pay each an equal share of the whole debt or of that part of it which remains unpaid by the principal debtor.

Illustrations.

(a) A, B, and C are surties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(b) A, B and C are sureties to D for the sum of rupees 1,000 lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter and C to the extent of one half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, and B 250 rupees, and C 500 rupees.

Liability of co-sureties bound in different sums.

100. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(a) A, B and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees A, B and C are each liable to pay 10,000 rupees.

(b) B and C as surties for D enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c) A, B and C, as surties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees. B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70 000 rupees. A, B and C have to pay each the full penalty of his bond,

CHAPTER VIII.

OF BAILMENT.

"Bailment" "bailor" and 'bailee" defined.

101. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the. "bailor" The person to whom they are dilivered is called the "bailee."

Explanation. If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been dilivered by way of bailment.

Delivery to bailee how made.

102. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.

Bailor's duty to disclose falts in goods bailed.

103. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage whether he was or was not aware of the existence of such faults in the goods balled.

Illustrations.

(*a*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away, B is thrown and injured. A is responsible to B for damago sustained.

(*b*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by bailee.

104. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed.

Bailee when not liable for loss, etc., of thing bailed.

105. The bailee, in the absence of any special contract is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 104.

Termination of bailment by bailee's act inconsistent with condition.

106. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration.

A lets to B, for hire, a horse of his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

107. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liablity of bailee making unauthorised use of goods bailed.

Illustration.

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidently falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b) A hires a horse at Trivandrum from B expressly to march to Quilon. A rides with due care, but marches to Nagercoil instead. The horse accidently falls and is injured A is liable to make compensation to B for the injury to the horse

108. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent of his goods with bailee's.

109. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of mixture without bailors consent when the goods can be separated.

Illustration

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent mixes the 100 bales with other bales of his own, bearing a different mark A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage

110. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture without bailor's consent, when the goods cannot be separated.

Illustration.

A bails a barrel of Cape flour worth Rs 45 to B B, without A's consent, mixes the flour with country flour of his own worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

111 Where by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Repayment by bailor of necessary expenses.

112. The lender of a thing for use may at any time require its return, if the loan was gratuitous even though he lent it for a specified time or purpose But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing

Restitution of goods lent gratuitously.

lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose.

113. It is the duty of the bailee to return or deliver according to the bailor's direction, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned.

114. If, by the default of the bailee, the goods are not returned, delivered or rendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Termination of gratuitous bailment by death.

115. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed.

116. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee.

117. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions respecting them.

Bailment by several joint owners.

118. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on redelivery to bailor without title.

119. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Right of third person claiming goods bailed.

120. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods; may sue for specific reward offered.

121. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward, for the return of goods lost the finder may sue for such reward, and may retain the goods until he receives it.

122. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it:

When finder of thing commonly on sale may sell it.

(1) when the thing is in danger of perishing or of losing the greater part of its value; or,

(2) when the lawful charges of the finder in respect of the thing found, amount to two thirds of its value.

123. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has tendered in respect of them.

Bailee's particular lien.

Illustrations.

(*a*) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months credit for the price. B is not entitled to retain the coat until he is paid.

124. Bankers, factors, wharfingers and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

General lien of bankers, factors, wharfingers and policy-brokers.

Bailments of Pledges.

125. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor," the bailee is called the "pawnee"

"Pledge" "pawnor" and "pawnee" defined.

126. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession of for the preservation of the goods pledged.

Pawnee's right of retainer.

127. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of any thing to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances

128. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right as to extraordinary expenses incurred.

129. If the pawnor makes default in payment of the debt or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

Pawnee's right where pawnor makes default

If the proceeds of such sale are less than the amount due in respect of the debt or pormise the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

130. If a time is stipulated for the payment of the debt, or performance of the promise for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must in that case, pay in addition, any expenses which have arisen from his default.

Defaulting pawnor's right to redeem.

131. Where a mercantile agent is, with the consent of the owner, in possession of goods or the document of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.

Pledge by mercantile agent.

Explanation. In this Section, the expressions "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Travancore Sale of Goods Act.

132. When the pawnor has obtained possession of the goods pledged by him under a contract voidable under Section 19 or Section 20, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Pledge by person in possession under voidable contract.

133. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

134. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Suit by bailor or bailee against wrong doer

135. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Appointment of relief or compensation obtained by such suits

143. An agent has authority, in an eme gency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Agent's authority in an emergency

Illustrations

(a) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Alloppey with directions to send them immediately to C at Trivandrum. B may sell the provisions at Alleppey if they will not bear the journey to Trivandrum without spoiling.

Sub-agents.

144. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or from the nature of the agency a sub-agent must be employed.

When agent cannot delegate.

145. A "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

"Sub-agent defined

106. Where as sub-agent is properly appointed the principal is, so far as regards third persons, represented by the sub-agent and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Representation of principal by sub-agent properly appointed.

The agent is responsible to the principal for the acts of the sub-agent.

Agent's responsibility for sub-agents.

The sub-agent is responsible for his acts to the agent, but not to the principal except in case of fraud or wilful wrong.

Sub-agent's responsibility.

147. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Agent's responsibility for sub-agent appointed without authority.

148. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him

Relation between principal and person duly appointed by agent to act in business of agency.

Illustrations.

(a) A directs B, his solicitor to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b) A authorises B, a merchant in Alleppey to recover the moneys due to A from C & Co., B instructs D, a solicitor to take legal proceedings against C & Co., for the recovery of the money. D is not a sub-agent, but is solicitor for A.

149. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty in naming such person.

Illustrations.

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant, for sale. B, in due course employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

150. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority. Effect of ratification.

151. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Ratification may be expressed or implied.

Illustrations.

(a) A, without authority, buys goods for B. Afterwards B sells them to C, on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b) A, without B's authority, lends B's money to C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.

152. No vaild ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Knowledge requisite for valid ratification.

153. A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Effect of ratifying unauthorised act forming part of a transaction.

154. An act done by one person on behalf of another, without such other person's authority, which if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Ratification of unauthorised act cannot injure third person.

Illustrations.

(*a*) A, not being authorised thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(*b*) A holds a lease from B, terminable on three months' notice. C, an unauthorised person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

REVOCATION OF AUTHORITY.

155. An agency is terminated by the principal revoking his authority: or by the agent renouncing the business of the agency; or by the business of agency being completed: or by either the principal or agent dying or becomming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency.

156. Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Termination of agency, where agent has an interest in subject-matter.

Illustrations.

(*a*) A gives authority to B to sell A's land, and to pay himself, out of the proceeds the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

157. The principal may, save as is otherwise provided by the last preceding section revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agents authority.

158. The principal cannot revoke the authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

Illustrations.

(*a*) A authorises B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000

bales of cotton in his own name so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorises B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensation for revocation by principal, or renunciation by agent.

159. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation.

160. Reasonable notice must be given of such revocation or renunciation otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

161. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent, respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent, and as to third persons.

162. The termination of the authority of an agent does not, so far as regards the agent take effect before it becomes known to him, or so far as regards third persons, before it becomes known to them.

Illustrations.

(a) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B as entitled to five rupees as his commission.

(b) A at Trivandrum by letter directs B to sell for him some cotton lying in a warehouse in Quilon, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Trivandrum B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

163. When an agency is terminated by the principal dying or becoming of unsound mind the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interest entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

164. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Termination of sub-agent's authority.

Agent's duty to principal.

165. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues, he must account for it.

Agent's duty in conducting principal's business.

Illustrations.

(*a*) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(*b*) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

166. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless, the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect want of skill o misconduct but not in respect of loss or damage which are indirectly o remotely caused by such neglect, want of skill or misconduct.

Skill and diligence required from agent.

Illustrations.

(*a*) A, a merchant in Trivandrum has an agent, B, in London o whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as *e. g.*, by variation of rate of exchange—but not further.

(*b*) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries

as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c) A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters A is bound to make good the loss to B.

(d) A, a merchant in England, directs B, his agent at Trivandrum, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

167. An agent's is bound to render proper account to his principal on demand.

Agent's duty to communicate with principal.

168. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Right of principal when agent deals, on his own account in business of agency without principal's Consent

169. If an agent deals on his own account in the business of the agency, wtihout first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly conceald from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) A directs B to sell A's estate. B on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

170. If an agent, without the knowledge of his principal, deals in the business of the agency, on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustrations.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

171. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

172. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal.

173. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act, but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

174. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

Illustrations.

(*a*) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 10,000 rupees. He is not entitled to any remuneratien for investing the 10,000 rupees and he must make good the 2,000 rupees to B.

(*b*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

175. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Agent's lien on principal's property.

Principal's Duty to Agent.

176. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Agent to be indemnified against consequence of lawful acts.

Illustrations.

(*a*) B at Kottayam under instructions from A of Trivandrum contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorises him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(*b*) B, a broker at Kottayam by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

Agent to be indemnified against consequences of acts done in good faith.

177. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of the third persons.

Illustrations.

(*a*) A, a decree-holder and entitled to execution of B's goods requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay C, in consequence of obeying A's directions.

(*b*) B at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

Non-liability of employer of agent to do a criminal act.

178. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the cosequences of that act.

Illustrations.

(*a*) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(*b*) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect.

179. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third person.

Enforcement and consequences of agent's contracts

180. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim for A the price of the goods and A cannot in a suit by the principal, set off against that claim a debt due to himself from B.

(b) A, being B's agent with authority to receive money on his behalf receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound when agent exceeds authority.

181. When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority can be separated from the part which is beyond his authority, so much only of what he does as is within his authority, is binding as between him and his principal.

Illustration.

A, being owner of a ship and cargo, authorises B to procure an insurance for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable.

182. Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

Illustration.

A authorises B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

Consequences of notice given to agent.

183. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(a) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b*) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

184. In the absence of any contract to that effect, an agent, cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

Such a contract shall be presumed to exist in the following cases: -

Presumption of contract to contrary.

(1) Where the contract is made by an agent for the sale of purchase of goods for a merchant resident abroad;

(2) Where the agent does not disclose the name of his principal;

(3) Where the principal, though disclosed, cannot be sued.

185. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

Rights of parties to a contract made by agent not disclosed.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

186. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Performance of contract with agent supposed to be principal.

Illustration.

A who owes 500 rupees to B, sells 1,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

187. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable.

Right of person dealing with agent personally liable.

Illustrations.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

188. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal, respectively.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

189. A person untruly representing himself to be the authorised agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent

190. A person with whom a contract has been entered into the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Persons falsely contracting as agent not entitled to performance.

191. When an agent has, without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorised acts were authorised.

Illustrations.

(*a*) A consigns goods to B for sale and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(*b*) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A.

192. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect on agreement, of misrepresentation or fraud by agent.

Illustrations.

(*a*) A being B's agent for the sale of goods induces C to buy them by a misrepresentation, which he was not authorised by B to make. The contract is voidable, as between B and C, at the option of C.

(*b*) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

193. Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—

Savings.

(a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, and

(c) anything done or suffered before the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS.

In deciding the question relating to contracts, it has been the usual practice in our Courts to apply and adopt the provisions of the Indian Contract Act. Krishnan Nair C. J. observed in Ali Ahmad Sait v. Rengaswami Iyengar that though no doubt the Indian Contract Act as such is not in force in Travancore, in the absence of a statutory enactment in this State the laws that prevail in British India are generally followed here. On more than one occasion the High Court had no doubt refused to adopt the principles contained in the Indian Contract Act for the reason that the English Common Law rule is more in consonance with justice, equity and good conscience, but an examination of the reported case law shows that such instances are very rare. In preparing this Bill, the provisions of the Indian Contract Act have therefore been adopted. Special mention has however to be made of the provisions contained in Clauses 26 and 105 of the Bill. Clause 26 corresponds to Section 25 of the Indian Contract Act. Sub-clause (1) provides that contract without consideration, but made out of natural love & affection is valid only if it is expressed in writing and registered. In this State the general rule is that no contract even if it be a contract of sale of immovable properties or gift need be in writing and contracts entered into for no consideration but out of natural love and affection have been recognised and enforced even when they are not in writing or not registered. Sub-clause (3) provides that a contract to pay a debt barred by the law of limitation shall be in writing. Therefore sub-clauses (1) and (3) of Clause 26 will hereafter effect an innovation in this respect. Clause 105 deals with liability of bailees- The expression 'bailee will include common carriers as well. The liability of common carriers in Travancore has been held to be absolute, the same as that under the English Common Law. but Clause 105 makes a departure in this respect that such carriers will be liable only for negligence. On these two points it has been thought desirable to adopt the provisions contained in the Indian Contract Act. Except to the extent indicated above, the Bill adopts in the main the principles of the law of contracts hitherto accepted and adopted by our Courts. In order that we may have a complete code relating to the law of contracts, the Partnership Bill, the Sale of Goods Bill, the Specific Relief Bill and the Arbitration Bill have been drafted and introduced along with this.

S. KRISHNA PILLAI,

Legal Remembrancer to Government.

Annexure II.

R. O. C. No. 103 of 38/Legis.

The following Bill, together with the Statement of Objects and Reasons is published as ordered by the Dewan, under Rule 31 of the Travancore Legislative Rules.

(By order)

Huzur Cutcherry,
Trivandrum 21st January 1939.

M. K. NILAKANTA AIYAR,
Ag. *Chief Secretary to Government*

THE TRAVANCORE SALE OF GOODS BILL.

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THE TRAVANCORE SALE OF GOODS BILL.

An Act to define and amend the law relating to the sale of goods.

Whereas it is expendient to define the law relating to the sale of goods; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Travancore Sale of Goods Act, 11

(2) It extends to the whole of Travancore.

(3) It shall come into force on ——

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "buyer" means a person who buys or agrees to buy goods ;

(2) "delivery" means voluntary transfer of possession from one person to another ;

(3) goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them ;

(4) "document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented ;

(5) "fault" means wrongful act or default ;

(6) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale ;

(7) "goods" means every kind of moveable property other than actionable claims and money ; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale ;

(8) a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not ;

(9) "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods ;

(10) "price" means the money consideration for a sale of goods.

(11) "property" means the general property in goods, and not merely a special property ;

(12) "quality of goods" includes their state or condition ;

(13) "seller" means a person who sells or agrees to sell goods ;

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made ; and

(15) expressions used but not defined in this Act and defined in the Travancore Contract Act 11——have the meanings assigned to them in that Act.

3. The provisions of the Travancore Contract Act II — have in so far as they are inconsistent with the express provisions of this Act, shall apply to contracts for the sale of goods.

Application of provisions of the Travancore contract Act.

CHAPTER II.

FORMATION OF THE CONTRACT.

Contract of sale.

4. (1) A contract of sale of goods is a contract where by the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

Sale and agreement to sell.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract.

5. (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

Contract of sale how made.

(2) Subject to the provisions of any law for the time being in force a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of contract.

6. (1) The goods which from the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

Existing or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

7. Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before making of contract.

8. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

Goods perishing before sale but after agreement to sell.

The Price.

9. (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

Ascertainment of price.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

10. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation the agreement is thereby avoided.

Agreement to sell at valuation.

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties.

11. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Stipulation as to time.

12. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

Condition and warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. The stipulation may be a condition though called a warranty in the contract.

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

When condition to be treated as warranty.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty the fulfilment of which is excused by law by reason of impossibilty or otherwise.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is

Implied undertaking as to title etc.

(a) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(b) an implied warranty that the buyer shall have and enjoy quite possession of the goods;

(c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

Sale by description.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied conditions to quality or fitness

16. Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, accept as follows.

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not, there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are brought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality;

Provided that, if the buyer, has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Regulation unless inconsistent therewith.

Sale by sample.

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there is an implied condition —

(a) that the bulk shall correspond with the sample in quality.

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

CHAPTER III.

EFFECTS OF THE CONTRACT.

Transfer of property as between seller and buyer.

Goods must be ascertained.

18. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Specific goods in a deliverable state.

20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price at the time of delivery of the goods, or both, is postponed.

Specific goods to be put into a deliverable state.

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the propose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Specific goods in a deliverable state when the seller has to do anything there to in order to ascertain price.

23. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer Such assent may be express or implied, and may be given either before or after the appropriation is made

Sale of unascertained goods and appropriation.

(2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and dos not reserve the right of disposal; he is deemed to have unconditionally appropriated the goods to the contract,

Delivery to carrier.

24. When goods are delivered to the buyer on approval or "on sale or return or other similar terms, the property therein passes to the buyer,

Goods sent on approval or "on sale or return."

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

25. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfiled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

Reservation of right of disposal.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if, he wrongfully retains the bill of lading the property in the goods does not pass to him.

26. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.

Risk *Prima facie* passes with property.

Provided that, where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of Title.

27. Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority of or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell;

Sale by person not the owner.

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

28. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by one of joint owners.

29. When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or Section 20 of the Travancore Contract Act II, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods provided he buys them in good faith and without notice of the seller's defect of title.

Sale by person in possession under voidable contract.

30. (1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

Seller or buyer in possession after sale.

(2) Where a person, having brought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV.

Performance of the Contract.

Duties of seller and buyer.

31. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods

Delivery.

33. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Effect of part delivery.

34. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate at a delivery of the remainder.

Buyer to apply for delivery.

35. Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Rules as to delivery.

36. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied between the parties. Apart from any such contract, goods sold or to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf;

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

Delivery of wrong quantity.

37. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

Instalment deliveries.

38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

Delivery to carrier or wharfinger.

39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier whether named by the buyer or not, for the purpose of transmission to the buyer or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course or transit or whilst in the custody of the wharfinger the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at a distant place.

40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless unless otherwise agreed, take any risk of deterioration in the goods, necessarily incident to the course of transit.

Buyer's right of examining the goods.

41. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

Acceptance.

43. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Buyer not bound to return rejected goods.

44. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods.

Liability of buyer for neglecting or refusing delivery of goods.

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

CHAPTER V.

Rights of unpaid seller against the goods.

45. (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

"Unpaid seller" defined.

(a) When the whole of the price has not been paid or tendered :

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment and the the condition on which it was received has not been fulfilled by reason of the dishonour of the Instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

46. (1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such has by implication of law—

Unpaid seller's rights.

(a) a lien on the goods for the price while he is in possession of them—

(b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them :

(c) a right of re sale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has in addition to his other remedies, a right of witholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

Unpaid seller's lien.

Seller's lien.

47. (1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely :—

(a) where the goods have been sold without any stipulation as to credit,

(b) where the goods have been sold on credit, but the term of credit has expired.

(c) where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

48. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien.

49. (1) The unpaid seller of goods loses his lien thereon—

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods ;

(b) when the buyer or his agent lawfully obtains possession of the goods ;

(c) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon ; does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit.

Right of stoppage in transit

50. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Duration of transit.

51. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

How stoppage in transit is effected.

52. (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to the effectual, shall be given at such time and in such circumstances that the principal by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods, to or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

Transfer by buyer and seller.

Effect of subsale or pledge by buyer.

53. (1) Subject to the provisions of this Act, the unpaid sellers right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto :

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the right of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

Sale not generally rescinded by lien or stoppage in transit.

54 (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit,

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the resale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the resale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in trasit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the resale has been given to the original buyer.

(4) Where the seller expressly reserves a right of resale in case the buyer should make default, and, on the buyer making default, resells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

CHAPTER VI.

SUITS FOR BREACH OF THE CONTRACT.

Suit for price.

55. (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2 Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

Damages for non-acceptance.

56. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Damages for non-delivery.

57. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Specific performance.

58. Subject to the provisions of Chapter II of the Specific Relief Act In any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otheswise, as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

59. (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

Remedy for breach of warranty.

(a) Set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) Sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

60. Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery or he may treat the contract as rescinded and sue for damages for the breach.

Repudiation of contract before due date.

61. (1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to cover the money paid where the consideration for the payment of it has failed.

Interest by way of damages and special damages.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

(a) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller—from the date on which the payment was made.

CHAPTER VII.

MISCELLANEOUS.

62. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

Exclusion of implied terms and conditions

63. Where in this Act any reference is made to a reasonable time the question what is a reasonable time is a question of fact.

Reasonable time a question of fact.

64. In the case of a sale by auction,—

Auction sale.

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction.

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such Person ; and any sale contravening this rule may be treated as fraudulent by the buyer ;

(5) the sale may be notified to be subject to a reserved or upset Price ;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

65. (1) Nothing in this Act shall affect or be deemed to affect—

Savings.

(a) any right, title, interest, obligation or liabtlity already acquired accrued or incurred before the commencement of this Act, or

(b) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability, or

(c) anything done or suffered before the commencement of this Act.

(d) any rule of law not inconsistent with this Act.

(2) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in this Act.

(3) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

STATEMENT OF OBJECTS AND REASONS.

Courts have been relying on the Indian Contract Act and the English Common law for adjudicating on disputes relating to sale of goods. They always apply the rule consistent with the principles of justice, equity and good conscience. Definiteness about one's rights and obligations, especially in commercial transactions is an essential requisite for the commercial prosperity of the State. In the advance in trade and commerce that the State has been making during the last few years, the absence of a statute embodying the principles of law applicable to commercial transactions, has been keenly felt. To remedy this defect, the present Bill has been drafted. This Bill is based on the Indian sale of Goods Act (III of 1930). In British India Chapter VII of the Indian Contract Act, 1872 which contained the law relating to sale of goods has been repealed and the Indian Sale of Goods

Act modelled on the English Sale of Goods Act, 1893 has been enacted. The English Sale of Goods Act has been adopted throughout the British Empire and even in more than half the number of States in the United States of America. Uniformity in commercial law is essential for the establishment and maintenance of healthy commercial relationship with foreign countries. All the principles hitherto adopted by our High Court have been kept in view in drafting the Bill. Reported decisions bearing on questions relating to sale of goods are not many. But the few that are reported are not in conflict with the principles contained in the Bill. Vide 38 T. L. R. 172. T. L. J. 323. 42 T. L. R. 348. 19 T. L. J. 1215, and 25 T. L. J. 1223.

S. KRISHNA PILLAI,
Legal Remembrancer to Government.

Annexure III.

R. O. C. No. 104 of 38/Legislative.

The following Bill, together with the statement of objects and Reasons, is published as ordered by the Dewan, Under Rule 31 of the Travancore Legislative Rules.

Huzur Cutcherry, (By order) M. K. NILAKANTA AIYAR,
Trivandrum, 21st January 1939. Ag. *Chief Secretary to Government.*

THE TRAVANCORE SPECIFIC RELIEF BILL.

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THE TRAVANCORE SPECIFIC RELIEF ACT.

A ACT TO DEFINE THE LAW RELATING TO CERTAIN KINDS OF SPECIFIC RELIEF.

Preamble.

Whereas it is expodient to define the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enaacted as follows;

PART I.

PRELIMINARY,

Short title, extent and commencement.

1. This Act may be called the Travancore Specific Relief Act. It extends to the whole of Travancore. It shall come into force.........

Interpretation clause.

2 In the Act, unless there be something repugnant in the subject or context,—

"Obligation" includes every duty enforceable by law.

"Trust" includes every species, of express, impried or constructive fiduciary ownership.

"Trustee" includes every person holding expressly or by implication or constructively a fiduciary character.

Illustrations.

(*a*) Z bequeaths lands to A, "not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life." A accepts the bequest, A is a trustee with in the meaning of this Act for B to the extent of the annuity,

(*b*) A is the legal, medical or spiritual advisor of B. By availing him self of his situation as such advisor A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee for B within the meaning of this Act of such advantage.

(*c*) A being B's banker discloses for his own purpose the state of B's account A is a trustee within the meaning of this Act. for B of the benefit gained by him by means of such disclosure.

(*d*) A, the mortgagee of certain kanoms renews the kanom in his own name. A is a trustee within the meaning of this Act of the renewed kanom for those interested in the original kanom.

(*e*) A, one of several partners is employed to purchase goods for the firm. A, unknown to his co-partners supplies them at the market price with goods previously bought by himself when the price was lower and thus makes a considerable profit. A is a trustee for his co-partners within the meaning of this Act of the profits so made.

(*f*) A, a manager of B's rubber factory becomes agent for C, a vendor of rubber and receives without B's assent commission on the rubber purchased from C for the factory. A is a trustee within the meaning of this Act for B of the commission so received.

(*g*) A buys certain land with notice that B has already contacted to buy it. A is a trustee within the meaning of this Act for B of the lands so bought.

(*h*) A buys lands from B having notice that C is in occupation of the land. B omits to make any enquiry as to the nature of C's interest therein. A is a trustee within the meaning of this Act for C to the extent of that interest.

"Settlement" means any instrument (other than a will or a codicil as defined in the Wills Act VI of 1074) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of.

All words occurring in this Act which are defined in the Travancore Contract Act, II... shall be deemed to have the meanings respectively assigned to them by that Act.

Savings

3. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(*a*) to give any right of relief in respect of an agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other than specific performance, which he may have, under any contract; or

(*c*) to affect the operation of the Registration Act on documents.

Specific Relief, how given.

4. Specific Relief is given—

(*a*) by taking possession of certain property and delivering it to a claimant;

(*b*) by ordering a party to do the very act which he is under an obligation to do;

(*c*) by preventing a party from doing that which he is under an obligation not to do;

(*d*) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(*e*) appointing a receiver.

Preventive Relief

5. Specific Relief granted under clause (c) of Section 4 is called "Preventive Relief."

Relief not granted to enforce penal law.

6. Specific Relief cannot be granted for the mere purpose of enforcing a penal law.

PART II.

Of Specific Relief.

CHAPTER I.

Of Recovering Possession of Property.

(*a*) *Possession of Immovable Property.*

Recovery of specific immovable property.

7. A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.

Suit by person dispossessed of immovable property.

8. If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may by suit recover possession thereof notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against Our Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

Possession of Movable Property.

9. A person entitled to the possession of specific movable property may recover the same in the manner prescribed by the Code of Civil Procedure.

Recovery of specific movable property.

Explanation I.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation II.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(*a*) A bequeaths land to B for his life with remainder to C. A dies. B enters on the land but C without B's consent obtains the possession of the title deeds. B may recover them from C.

(*b*) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A without having paid or tendered the amount of the loan sues B for possession of the jewels. The suit should be dismissed as A is not entitled to their possession whatever right he may have to secure their safe custody.

(*c*) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(*d*) A deposits books and papers for safe custody to B. B. loses them and C find them but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under Section 169 of the Travancore Contract Act, II.

(*e*) A, a warehouse keeper is charged with the delivery of certain goods to Z which B takes out of A's possession. A may sue B for the goods.

10. Any person having the possession or control of a particular article of movable property of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession in any of the following cases :—

Liability of person in possession not as owner, to deliver to person entitled to immediate possession.

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant ;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed.

(*c*) when it would be extremely difficult to ascertain the actual damage caused by its loss ;

(*d*) when the possession of the thing claimed has been wrongfuly transferred from the claimant ;

Illustrations

Clause (a)

A proceeding to Europe leaves his furniture in charge of B as his agent during his absence. B without A's authority pledges the furniture to C

and C knowing that B had no right to pledge the furniture advertises it for sale. C may be compelled to deliver the furniture to A for he holds it as A's trustee.

Clause (b).

Z has got possession of an idol belonging to A's family and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

Clause (c).

A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market value. B may be compelled to deliver them to A.

CHAPTER II.

(a) Contract which may be specifically enforced.

OF THE SPECIFIC PEFORMANCE OF CONTRACT.

11. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced,

Cases in which specific performance enforceable.

(a) when the act agreed to be done is in the performance, wholly or partly, of a trust;

(b) when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done;

(c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or

(d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer movable property can be thus relieved.

Illustrations.

Clause (a).

A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B and B may enforce specific performance of this obligation.

Clause (b).

A agrees to buy and B agrees to sell a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

Clause (c).

1. A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase money.

2. In consideration of being released from certain obligations imposed on it by its act of incorporation, a railway company contracts with Z to make an archway through their railway, to connect lands of Z served by the railway, to construct a road between certain specific points, to pay a certain annual sum towards the maintenance of this road and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced for his interests in its performance cannot be adequately compensated for by money and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

3. A contracts to sell and B contracts to buy a certain number of shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform the agreement for the shares are limited in number and not always to be had in the market and their possession carries with it the status of a share-holder which cannot otherwise be procured.

4. A contracts with B to paint a picture for B who agrees to pay therefore Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of Rs. 1,000.

Clause (d).

A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed as his assignee. B may compel C to endorse the note for C has succeeded to A's liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist.

12. Notwithstanding anything contained in Section 57 of the Travancore Contract Regulation, a contract is not wholly impossible of performance because a portion of its subject matter existing at its date has ceased to exist at the time of the performance.

Illustrations.

(*a*) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase money.

(*b*) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

13. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed and award compensation in money for the deficiency.

Illustrations.

(*a*) A contracts to sell B a piece of land consisting of 100 acres. It turns out that 98 acres of the land belong to A and the 2 remaining acres to a stranger, who refuses to part with them. The two acres are not nece-

ssary for the use or enjoyment of the 98 acres nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 acres and to make compensation to him for not conveying the two remaining acres; or, B may be directed at the suit of A to pay to A on receiving the conveyance and possession of the land the stipulated purchase-money less a sum awarded as compensation for the deficiency.

(b) In a contract for the sale and purchase of a house and lands for 2 lakhs of rupees it is agreed that part of the furniture should be taken at a valuation; The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance or may confine its decree to the house.

Specific performance of part of contract where part unperformed is large.

14. Where a party to a contract is unable to perform the whole of his part of it and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform provided that the plaintiff relinquishes all claim to further performance, and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(a) A contract to sell to B a piece of land consisting of 100 acres. It turns out that 50 acres of the land belong to A and the other 50 acres to a stranger who refuses to part with them. A cannot obtain a decree againt B for the specific performance of the contract but if B is willing to pay the price agreed upon and to take the 50 acres which belong to A waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default B is entitled to a decree directing A to convey those 50 acres to him on payment of the purchase money.

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract but B is willing to pay the price agreed upon and to take the estate and house without the garden waiving all right to compensation either for the deficiency or for loss sustaint by him through A's neglect or default. B is entitled to a decree directing A to convey the house to him on payment of the purchase money.

Specific performance of independent part of contract.

15. When a part of a contract which taken by itself can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed the court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

16. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

17. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights:—

Purchaser's rights aginst vendor with imperfect title.

(*a*) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;

(*b*) where the concurrence of other persons is necessary to validate the title and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(*c*) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee;

(*d*) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has the right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

18. Any person suing for the specific performance of a contract may also ask for compensation for its breach either in addition to, or in substitution for such performance.

Power to award compensation in certain cases.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation.— The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising jurisdiction conferred by this section.

Illustrations.

Second Paragraph.

A contracts to sell a hundred parahs of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The court is of opinion that A has made a valid contract and has broken it without excuse to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

Third Paragraph.

A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st Chingam 1114. A fails to perform his part of the contract and B brings his suit for specific performance and compensation which is decided in his favour on 1st Chingom 1115. The decree may besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

Explanation.

A, a purchaser sues B his vendor for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A compensation for the non-performance of the contract and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the directors of a public company under which he was entitled to have a certain number of shares allotted to him and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may under this section award A compensation for the non-performance.

19. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same

Liquidation of damages not a bar to specific performance.

Illustration.

A contracts to grant B an under-lease of property, held by A under C, and that he will apply to C for a licence necessary to the validity of the underlease, and that, if the licence is not procured A will pay B. Rs. 1,000. A refuses to apply for the license and offers to pay B. Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(b) *Contract which cannot be specifically enforced.*

20. The following contracts cannot be specifically enforced :—

Contracts not specifically enforceable.

(*a*) a contract for the non-performance of which compensation in money is an adequate relief ;

CL (*b*) a contract which runs into such minute or on numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such that the Court cannot enforce specific performance of its material terms ;

(*c*) a contract the terms of which the Court cannot find with reasonable certainty ;

(*d*) a contract which is in its nature revocable ;

(*e*) a contract made by trustees either in excess of their powers or in breach of their trust ;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company which is in excess of its powers ;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ; and

(*h*) a contract of which a material part of the subject matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure and the Travancore Arbitration Act, no contract to refer present or future difference to arbitration shall be specifically enforced.

Illustrations.

Clause (a).

A contracts to sell and B contracts to buy a lakh of rupees in the four per cent. loan of the Government of India ;

A contracts to sell and B contracts to buy 40 chests of tea at Rs. 100 per chest.

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000 and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced for, in the 1st and 2nd both A and B and in the 3rd, A would be reimbursed by compensation in money.

Clause (b).

A contracts to render personal service to B. A contracts to employ B on personal service. A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer but before the valuation is made A instructs his valuer not to proceed.

By a charter party entered into in Alleppey between A, the owner of a ship and B, the charterer, it is agreed that the ship shall proceed to Bombay and there load a cargo of rice and thence proceed to London, freight to be paid one-third on arrival at Bombay, and two-thirds on delivery of the cargo in London.

A lets land to B and B contracts to cultivate it in a particular manner for 3 years next after the date of the lease ;

A and B contract that in consideration of annual advances to be made by A, B will for 3 years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery.

A contracts with B that in consideration of Rs. 1,000 to be paid to him by B he will paint a picture for B.

A contracts with B to execute certain works which the Court cannot superintend ;

A contracts to supply B with all the goods of a certain class which B may require ;

A contracts with B to take from B a lease of a certain house for a specified term at a specified rent "if the drawing room is handsomely decorated", even if it is held to have so much certainty that compensation can be recovered for its breach.

A contracts to marry B.

The above contracts cannot be specifically enforced.

Clause (*c*).

A, the owner of a refreshment room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

Clause (*d*).

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. The contract cannot be specifically performed, for if it were so performed either A or B might at once dissolve the partnership.

Clause (*e*).

A is a trustee of land with power to lease it for 7 years. He enters into a contract with B to grant a lease of the land for 7 years with a contract to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees A and B empowered to sell trust property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be breach of trust, C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property and in fact agree to pay an extravagant price therefore. They also stipulate that the vendors shall give them a bonus out of the purchase money. This contract cannot be specifically enforced.

Clause (*f*).

A company existing for the sole purpose of making and working a railway, contract for the purchase of a piece of land for the purpose of erecting a cotton mill thereon. This contract cannot be specifically enforced.

Clause (*g*).

A contracts to let for 21 years to B, the right to use such part of a certain railway made by A as was upon B's land and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

Clause (*h*).

A contrracts to pay an annuity to B for the lives of C and D. It turns out that at the date of the contract C though supposed by A and B to be alive, was dead. The contract cannot be specifically enforced.

(c) *Of the discretion of the Court.*

21. The jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

Discretion as to decreeing specific performance.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. When the circumstances under which the contract is made or such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(*a*) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy and B contracts to sell that interest. Before the contract is completed A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact and C did not, specific performance of the contract should be refused to B.

(*b*) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good even though it should turn out that C's interest is worth nothing: In fact, the value of C's interest depends on the result of certain partnership accounts on which he is heavily in debt to his partners. This indebtedness is known to A but not to B. Specific performance of the contract should be refused to A.

(*c*) A contracts to sell and B contracts to buy certain land. To protect the land from floods it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance and A conceals it from him. Specific performance of the contract should be refused to A.

(*d*) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the preformance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(*e*) A is entitled to some land under his father's will on condition that if he sells it within 25 years half the purchase money shall go to B. A, forgetting the condition contracts before the expiration of the 25 years to sell the land to C. Here the enforcement of the contract would operate so harshly on A that the Court will not compel its specific performance in favour of C.

(*f*) A and B, trustees, join their beneficiary C in a contract to sell the trust estate to D and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase money is not nearly enough to discharge those incumbrances, though at the date of the contract the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(*g*) A, the owner of an estate, contracts to sell it to B and stipulates, that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property.

(*h*) A contracts with B to sell him certain land and to make a road to it from a certain railway station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B even though it may be held that he is entitled to specific performance of the rest with compensation for the loss of the road.

(*i*) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business and specific performance of it should be refused to B.

(*j*) A contracts to buy certain lands from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(*k*) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance.

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway company who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(*d*) *For whom contracts may be specifically enforced.*

Who may obtain specific performance.

22. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(*a*) any party thereto :

(*b*) the representative in interest or the principal or any party thereto :

Provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;

(*c*) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder :

(*d*) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder-man:

(*e*) a reversioner in possession where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant:

(*f*) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(*g*) when a public company has entred into a contract and subsequently becomes amalgamated with another public company the new company which arises out of the amalgamation; or

(*h*) when the promoters of a public company have before its incorporation entered into a contract for the purposes of the company and such contract is warranted by the terms of the incorporation, the company.

(*e*) *For whom contract cannot be specifically enforced.*

23. Specific performance of a contract cannot be enforced in favour of a person—

Personal bars to the rules.

(*a*) who could not recover compensation for its breach:

(*b*) who has become incapable of performing, or violates any essential term of the contract that on his part remains to be performed;

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or

(*d*) who previously, to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations.

Clause (a).

A, in the character of agent for B, enters into an agreement with C to buy C's house A is in reality acting not as agent for B but on his own account. A cannot enforce specific performance of this contract.

Clause (b).

A contracts to sell B a house and to become tenant thereof for a term of 14 years from the date of the sale at a specified yearly rent A becomes insolvent Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, the meterial element in the value of the property as a residence. A without B's consent fells the trees, A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease commits waste or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let and B contracts to take an unfinished house, B contracting to finish the house and the lease to contain covenant on the part of A to keep the house in repair. B finishes the house in a very defective manner. He cannot enforce the contract specifically though A and B may sue each other for compensation for breach of it.

Clause (c).

A contracts to let and B contracts to take a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for and obtains compensation for the breach. A cannot obtain specific performance of the contract.

Contract to sell property by one who has no title or who is a voluntary settler-

24. A contracts for the sale or letting of property whether movable or immovable cannot be specifically enforced in favour of a vendor or lessor-

(*a*) who knowing himself not to have any title to the property has contracted to sell or let the same;

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the matter of the contract.

Illustrations

(*a*) A without C's authority contracts to sell B an estate which A knows to belong to C. A cannot enforce specific performance of this contract even though C is willing to confirm it.

(*b*) A bequeaths his land to trustees declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract as in the absence of B's consent to the particular sale to C the title which they can give C is as the law stands, not free from reasonable doubt.

(*c*) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B who left the country several years before and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(*d*) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to over-ride the settlement and thus prejudice the interests of the person claiming under it.

(*f*) ***For whom contract cannot be specifically enforced except with a variation.***

Non-enforcement except with variation

25. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought except with the variation so set up in the following cases, namely: –

(*a*) where, by fraud or mistake of fact, the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(*b*) where, by fraud, mistake of fact or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff :

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's parts which adds to the contract, but which he refuses to fulfil ;

(*d*) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce ;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(*a*) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D to make A, B and C separately liable each to the extent of Rs. 1,000 they prove that the word "each" was inserted by mistake ; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(*b*) A sues B to compel specific performance of a contract in writing to buy a dwelling house. B proves that he assumed that the contract included an adjoining yard and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract except with the variation set up by B.

(*c*) A contracts in writing to let to B a wharf together with a strip of A's land delineated in a map. Before signing the contract B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract except with the variation set up by B.

(*d*) A and B enter into negotiations for the purpose of securing land for B for his life with remainder to his issue. They execute a contract the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(*e*) A contracts in writing to let a house to B for a certain term at the rent of Rs. 100 per month putting it first into tenantable repair. The house turns out to be not worth repairing. So with B's consent A pulls it down and erects a new house in its place, B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(*g*) *Against whom contracts may be specifically enforced.*

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

Relief against parties and persons claiming under them by subsequent title.

(*a*) either party thereto ;

(*b*) any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract ;

(c) any person claiming under a title which though prior to the contract and known to the plaintiff might have been displaced by the defendant;

(d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(e) when the promotors of a public company have before its incorporation entered into a contract, the company: Provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations.

Clause (b).

A contracts to convey certain lands to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C. who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest and he may enforce specific performance of the contract against C.

A contracts in consideration of Rs. 1,000 to bequeath certain of his lands to B. Immediately after the contract, A dies intestate and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract A becomes a lunatic and C is appointed his guardian. B may specifically enforce the contract against C.

Clause (c).

A, the tenant for life of an estate with remainder to B in due exercise of a power conferred by the settlement under which he is tenant for life contracts to sell the estate to C who has notice of the settlement. Before the sale is completed A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land his undivided moiety of which either may alienate in his life-time but which subject to that right devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

Specific performance in case of part performance of contract to lease.

27. Subject to the provisions of this Chapter where a contract to lease immovable property is made in writing signed by the parties thereto or on their behalf, either party may notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if—

(a) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part-performance of the contract; and

(b) where specific performance is claimed by the lessee, he has in part-performance of the contract taken possession of the property, or, being already in possession, continues in possession in part-performance of the contract, and has done some act in furtherance of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part-performance thereof.

(h) Against whom contracts cannot be specifically enforced.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:—

What parties cannot be compelled to perform.

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances, evidence of fraud or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practice, of any party to whom performance would become due under the contract or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of facts, misapprehension or surprise; Provided that when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations to Clause (c).

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 acres of his land but the auctioneer inadvertently sells the whole to B who has no notice of the revocation. B cannot enforce specific performance of the agreement.

(i) The effect of dismissing the suit for specific performance.

29. The dismissal of the suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

Bar of suit for breach after dismissal

(j) Awards and directions to execute settlement.

30. The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and directions in a will or codicil to execute particular settlements.

Application of preceding sections to awards and testamentary directions to execute settlements.

Chapter III.

Of the rectification of Instruments.

31. When through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party or his representative in interest, may institute a suit to have the instrument rectified; and if the Court finds it clearly proved that there has been fraud or mistake in framing the instrument, and ascertains the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention so far as this can be done without prejudice to the rights acquired by third persons in good faith and for value.

When instrument may be rectified.

Illustrations.

(*a*) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which through B's fraud all the three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for rent neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(*b*) By a marriage settlement A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

32. For the purpose of rectifying a contract in writing the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

Presumption as to intent of parties.

33. In rectifying a written instrument the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequence, and is not confined to the inquiry what the language of the instrument was intended to be.

Principle of rectification.

34. A contract in writing may be first rectified and then if the plaintiff has so prayed in his plaint and the Court thinks fit specifically enforced.

Specific performance of rectified contracts.

Illustration.

A contracts in writing to pay his Vakil, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client which if construed strictly would exclude B from all rights under it. B is entitled if the Court thinks fit to have it rectified and to an order for payment of the sum as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

Of the Rescission of Contracts.

35 Any person interested in a contract in writing may sue to have it rescinded such recission may be adjudged by the Court in any of the following cases namely:—

When rescission may be adjudged.

(*a*) where the contract is voidable or terminable by the plaintiff;

(*b*) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff;

(*c*) where a decree for the specific performance of a contract of sale or of a contract to take a lease has been made and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject matter, and the Court finds that such possession is wrongful the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustrations.

To Clause (a).

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge but which he conceals from B, B is entitled to have the contract rescinded.

To Clause (b).

A, a vakil induces his client B to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault and B is entitled to have the instrument of transfer rescinded.

36. Rescission of a contract in writing cannot be adjudged for mere mistake unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Rescission for mistake

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled, and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Alternative prayer for rescission in suit for specific performance.

38. On adjudging the rescission of a contract the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Court may require party rescinding to do equity.

Chapter V.

Of the cancellation of Instrument.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion so adjudged it and order it to be delivered up and cancelled.

When cancellation may be ordered

If the instrument has been registered under the Registration Act, the Court shall send a copy of its decree to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a*) A, the owner of a ship, by fraudulently representing her to be sea-worthy, induces B an under-writer to insure her. B may obtain the cancellation of the policy.

(*b*) A conveys land to B who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(*c*) A representing that the tenants on his land were all at will, sells it to B and conveys it to him by an instrument, dated the 1st Chingom 11 5. Soon after that day A fradulently grants to C a lease of a part of the lands, dated the 1st Mithunam 1114 and procures it to be registered under the Registration Act. B may obtain the cancellation of this lease.

(*d*) A agrees to sell and deliver a ship to B, to be paid for by B's acceptance of 4 Bills of Exchange for sums amounting to Rs 30,000 to be drawn by A on B. The Bills are drawn and accepted but the ship is not delivered according to the agreement. A sues B on one of the Bills. B may obtain the cancellation of all the Bills.

40 Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

What instrument may be partially cancelled

Illustration.

A draws a bill on B who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled leaving the bill to stand in other respects.

Power to require parts to whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Chapter VI.

Of Declaratory Decrees.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character, or right, and the Court may in its discrition make therein a declaration that he is not entitled and the plaintiff need not in such suit ask for any further relief

Discretion of Court as to declaration of status or right.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Bar to such declaration.

Explanation. A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom if in existence he would be a trustee.

Illustrations.

(*a*) A is lawfully in possession of certain lands. The inhabitants of the neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(*b*) A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst the surving children". No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives and it may also declare the interests of the children before their rights are vested.

(*c*) A covents that, if he should at any time be entitled to property exceeding one lakh of rupees he will settle it upon certain trusts. Before any such property accrues or any persons, entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainly. The Court may make the declaration.

(*d*) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

(*e*) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he surve her may in a suit against the alienee obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(*f*) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitiled to possession of the property on her death without a son, may, in a suit against the adopted son obtaine a declaration that the adoption was invalid.

(*g*) A is in possession of certain property. B alleging that he is the owner of the property requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(*h*) A bequeaths property to B for his life, with remainder to B's wife and her children, if any by B but, if B die without any wife or children to C. B has a putative wife D and children, but C denies that B and D were ever lawfully married. C and her children may in B's lifetime institute a suit against C and obtain therein a declaration that they are truely the wife and children of B.

48. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees

Effect of declaration.

Illustration.

A, a Hindu in a suit no which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnised and and an order for the restitution of his conjugal rights. The Court

makes the declaration and order. C claiming that B is his wife then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII

Of the Appointment of Receivers.

Appointment of receiver discretionary.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

The mode and effect of his appointment and his rights, powers, duties and liabilities are regulated by the Code of Civil Procedure.

PART III.

OF PREVENTIVE RELIEF.

CHAPTER VIII.

OF INJUNCTIONS GENERALLY.

Preventive Relief how granted.

45. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Temporary injunctions.

46. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of suit, and are regulated by the Court of Civil Procedure.

Perpetual injunction.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER IX.

OF PERPETUAL INJUNCTIONS.

Perpetual injunctions when granted.

47. Subject to the other provisions contained in, or referred to, by this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

When such obligation arises from contract the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the Court may grant a perpetual injunction in the following cases namely;—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused or likely to be caused by the invasion;

(c) where the invasion is such that pecuniary compensation would not afford adequate relief;

(d) where it is probable that pecuniary compensation cannot be got for the invasion; and

(e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation, For the purpose of this section a trade mark is property.

Illustrations.

(*a*) A lets certain lands to B and B contracts not to dig sand of gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract;

(*b*) A, a trustee threatens a breach of trust. His co-trustees, if any, should and the beneficial owners may, sue for an injunction to prevent the breach.

(*c*) The Directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(*d*) The Directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(*e*) A, an executor, through misconduct or insolvency is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(*f*) A, a trustee for B is about to make an imprudent sale of a small part of the trust property. B may sue for an injunction to restrain the sale even though compensation in money would have afford him adequate relilef

(*g*) A makes a settlement (not founded on marriage or other valuable consideration) of an Estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(*h*) In the course of A's employment as a vakil, certain papers belonging to his client B, come into his possession. A threatens to make these papers public or to communicate their contents to a stranger. B may sue for an injunction to restrain him from so doing.

(*i*) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(*j*) A, the owner of two adjoining houses lets one to B and afterwards lets the other to C. A and C begin to make such alternations in the house let to see as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(*k*) A lets certain arable lands to B for purposes of husbandry but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seeds injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(l) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership property. B and C may without seeking a dissolution of the partnership sue for an injunction to restrain A from doing the act.

(*m* A, a Hindu widow in possession of her deceased husbands's property commits destruction of the property without any cause sufficient to justify her in so doing. The reversioner may sue for an injunction to restrain her

(*n*) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family property and threatens to destroy part of the family house and to sell some of the family utensils. B and C may sue for an injunction to restrain him.

(o) A, the owner of certain houses in Trivandrum becomes insolvent. B buys them from the official receiver and enters into possession. A persists in trespassing on and damaging the houses and B is thereby compelled at considerable expense to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p) The inhabitants of a village claim a right of way over A's land. In a suit against several of them A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue or an injunction to restrain them.

(q) A in an administration suit, to which a creditor B is not a perty, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier B. B may sue for an injunction restraining A from making the noise.

(t) A pollutes the air with smoke so as to interefere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed B may obtain an injunction to restrain the infringment.

(v) A pirates B's copy-right. B may obtain an injunction to restrain the piracy unless the work of which copy-right, is claimed is libelious or obscene.

(w) A improperly uses the trade mark of B. may abtain an injunction to restrain the user provided that B's use of the trade mark is honest.

(x) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes latters on family topics to B. After the death of A and B, C who is B's residuary legatee, proposes to make money by publishing A's letters. D who is A's executor has a property in the letters and may sue for an injunction to restrain C from publishing them.

(z) A carries on a manufactory and B is his assistant In the course of his business A imparts to B a secret process of value B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

Mandatory injunctions.

48. When to prevent the breach of an obligation it is necessary to compel the performance of certain acts which the Courts is capable of enforcing, the Court may in iis discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite act

Illustrations.

(*a*) A, buy new buildings, obstructs light to the access and use of which B has acquired a right under the Travancore Limitation Act. B may obtain an injunction, not only to restrain A from going on with the buildings but also to pull down so much of them as obstructs B's lights,

(*b*) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(*c*) In the case put as illustration (i) to Section 47, the Court may also order all written communications made by B as patient, to A as medical adviser, to be destroyed.

(*d*) In the case put as illustration (by) to section 47, the Court may also order A's letters to be destroyed,

(*e*) A threatens to publish statement concerning B which would be punishable under Chapter XXI of the Travancore Penal Code, The Court may grant an injunction to restrain the publication even though it may be shown not to be injurious to B's property.

(*f*) A being B's medical adviser, threatens to publish B's written communitions to him showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(*g*) In the cases put as illustration (v) and (w) to Section 47 and as illustrations (e) and (f) to this Section the Court may also order the copies produced by piracy and the trade marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

49. An injunction cannot be granted.

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought unless such restraint is necessary to prevent a multiplicity of proceedings;

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought;

(*c*) to restrain persons from applying to any legislative body;

(*d*) to interfere with the public duties of any Department of Our Government;

(*e*) to stay proceedings in any Criminal matter;

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced;

(*g*) to prevent on the ground of nuisance an act of which it is not reasonably clear that it will be a nuisance;

(*h*) to prevent a continuing breach in which the applicant has acquiesced;

(*i*) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;

(*j*) when the conduct of the applicant or his agent has been such as to disentitle him to the assistance of the Court; and

(*k*) where the applicant has no personal interest in the matter.

Illustrations.

(*a*) A seeks an injunction to restrain his partner B from receiving the partnership debts and effects. It appears that a had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles designating them as "patent plumbago-crucibles" though in fact they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called "Mexican Balm" stating that it is compounded of diverse rare essences and has sovereign medicinal qualities B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's "Mexican Balm" A sues B for an injunction to restrain the sale. B shows that A's "Mexican Balm" consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

Injunction to perform negative agreement.

50 Notwithstanding Section 49, clause (f) where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(a) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business premises, and further agrees not to carry on that business in Trivandrum B pays A the Rs 1,000 but A carries on the business in Trivandrum. The court cannot compel A to send his customers to B but B may obtain an injunction restraining A from carrying on the business in Trivandrum.

(b) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop and solicits his old customers to deal with him. This is contrary to his implied contract and B may obtain an injunction to restrain A from soliciting the customers and from doing any act whereby their good-will may be withdrawn from B.

(c) A contracts with B to sing for 12 months at B's theatre and not to sing in public elsewhere B cannot obtain specific performance of the contract to sing but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d) B contracts with A that he will serve him faithfully for 12 months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(e) A contracts with B that in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

Repeal of enactments.

51. On and from the day on which this Act comes into force the enactment mentioned in the Schedule annexed to this Act shall be repealed to the extent specified in the third column thereof.

Savings.

52. Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—

(a) any right, title, interest, obligation or liability already acquired accrued or incurred before the commencement of this Act, or

(b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or

(c) anything done or suffered before the commencement of this Act, or

(d) any rule of law not inconsistent with this Act.

SCHEDULE.

ENACTMENT REPEALED.

(*See Section 51*)

Number and year of enactment.	Short title.	Extent of Repeal.
VI of 1100	The Travancore Limitation Act.	Section 32 and the words "under Section 32 of the Act" occuring in Article 2 of the first Schedule.

STATEMENT OF OBJECTS AND REASONS.

This Bill is intended as a supplement to the Code of Civil Procedure (VIII of 1100) and its object is to define and amend the law relating to specific and preventive relief. At present, the Courts in this State in adjudicating on questions of specific and preventive relief rely on the provisions of the Indian Specific Relief Act (Act I of 1877) and to some extent on the decisions of the Court of Equity in England. The Indian Specific Relief Act is adopted as the basis for this Bill. Under the head of specific relief it deals with suits for

(a) the possession of specific property movable or immovable,
(b) the specific performance of agreement,
(c) the rectification of instruments,
(d) the rescission of contracts,
(e) the cancellation of instruments,
(f) the declaratory decrees and
(g) appointment of receivers.

Under the head of preventive relief, it deals with injunctions, temporary and perpetual. In the Notes on clauses, references have been made to the reported decisions of the High Court of Travancore which will show that the principles contained in the Bill are not at variance with the principles adopted and applied so for in dealing with questions relating to specific and preventive relief.

NOTES ON CLAUSES.

Clause 2 defines certain expressions. It also provides that expressions used in this Act shall bear the same meaning given to them under the Contract Act.

Clause 3 provides for the saving of certain rights.

Clauses 4 to 6 specify the various forms of Specific Relief granted under the Act.

Clauses 7 and 8, provide for the recovery of possession of immovable property dispossessed, notwithstanding any title in the person dispossessing. Section 32 of the Limitation Act (VI of 1100) though based on Section 8 of the Indian Specific Relief Act (I of 1877) is materially different therefrom in one respect. Section 32 contemplates a summary remedy only in case of "house, building or land" whereas Section 8 of the Specific Relief Act deals with "immovable property" of all kinds including standing crops and fixtures of all kinds. *Vide* 12 T. L. R. 180 and 30 T. L. R. 116. Section 32 reproduces Section 29 of the Limitation Act, (Act II of 1062). Whatever justification there may have been then in thus restricting the remedy to "house, building or land" its continuance is unnecessary. Hence the section is made applicable to all immovable properties. As the appropriate place for this provision is in this Act dealing with Specific Relief, Section 32 of the Limitation Act (VI of 1100) is repealed. *Vide* Clause 51 and the Schedule.

Clauses 9 and 10 provide for the recovery of specific movable property by person entitled thereto. *Vide* 20 T. L J. 204.

Clauses 11 to 30 deal with specific performance of contracts, Clauses 11 to 20 deal with contracts which may and may not be specifically enforced; Clause 21 deals with the discretion of Courts in a suit for specific performance. Clauses 22 to 28 deal with cases for whom and against whom contracts may or may not be specifically enforced either wholly or with variations and Clause 29 bars a suit for breach after dismissal of a suit for specific performance and Clause 30 extends the above provisions to awards and tesatmentary directions. Many of the principles contained in these clauses have been discussed and adopted in the various cases bearing on the questions. *Vide* 26 T. L. J. 827; 18 T. L. J. 118; 10 T. L. T. 107; 2 S. D. 73 and 22 T. L. J. 131.

Clauses 31 to 34 deal with cases relating to rectification of instruments. In 26 T. L. J. 971 and 3 S. D. 249, the principles embodied in these have been discussed and adopted.

Clauses 35 to 38 deal with rescission of contracts.

Clauses 39 to 41 deal with the cancellation of instruments. *Vide 3* T. L. T 715 and *3* S. D. 54 which discuss the matter and adopt the principle contained in these clauses.

Clauses 42 and 43 deal with declaratory decrees. 18 T. L R. 22, 22 T. L. J. 57 and 25 T. L. J. 592 are some of the cases in which the principles of these sections have been adopted.

Clause 44 provides that the appointment of a receiver *pendente lite* is a matter of discretion. This has been the uniform rule adopted in our Courts.

Clauses 45 to 50 deal with preventive reliefs by way of injunctions. They lay down rules which are being uniformly followed in our Courts.

S. KRISHNA PILLAI,
Legal Remembrancer to Government.

Annexure IV.

R. O. C. No. 111/39/Legislative.

The following Bill, together with the Statement of Objects and Reasons, is published as ordered by the Dewan, under Rule 31 of the Travancore Legislative Rules.

(By order)

Huzur Cutcherry,
Trivandrum, 21st January 1939.

M. K. NILAKANTA AIYAR,
Ag. Chief Secretary to Government.

THE TRAVANCORE PARTNERSHIP BILL.

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CHAPER VIII.

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THE TRAVANCORE PARTNERSHIP BILL.

AN ACT TO DEFINE AND AMEND THE LAW RELATING TO PARTNERSHIP.

Whereas it is expedient to define and amend the law relating to partnership it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement. 1. (1) This act may be called the Travancore Partnership Act II of.

(2) It extends to the whole of Travancore.

(3) It shall come into force at once, except Section 68, which shall come into force on the date of expiry of one year from the date on which the other provisions of this act come into force.

Definitions. 2. In this act unless there is anything repugnant in the subject or context :—

(a) an "act of a firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm ;

(b) "business" includes every trade. occupation and profession ;

(c) "prescribed" means prescribed by rules made under this Act.

(d) "third party" used in relation to a firm or to a partner therein means any person who is not a partner in the firm ; and

(e) expressions used but not defined in this act and defined in the Travancore Contract Act III, shall have the meanings assigned to them in that act.

Application of the general law of contracts. 3. The provisions of the Travancore Contract act save in so far as they are inconsistent with the express provisions of this act shall apply to firms.

CHAPTER II.

THE NATURE OF PARTNERSHIP.

"Definition of partnership" "Partner" "Firm" and "Firm name" 4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name."

Partnership not created by status. 5. The relation of partnership arises from contract and not from status ;

And in particular, the members of a Hindu undivided family carrying on a family business as such are not partners in such business.

Mode of determining existence of partnership. 6. In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties as shown by all relevant facts taken together.

Explanation—1. The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation—2. The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business; and in particular the receipt of such share or payment—

(a) by a lender of money to persons engaged or about to engage in any business,

(b) by a servant or agent as remuneration,

(c) by the widow or child of a deceased partner, as annuity, or

(d) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof, does not itself make the receiver a partner with the persons carrying on the business.

Partnership at will.

7. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will".

Particular partnership.

8. A person may become a partner with another person in particular adventures or undertakings.

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

General duties of partners.

9. Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

Duty to indemnify for loss caused by fraud.

10. Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Determination of rights and duties of partners by contract between the partners.

11. (1) Subject to the provisions of this act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing

Such contract may be varied by consent of all the partners, and consent may be express or may be implied by a course of dealing.

Agreements in restraint of trade.

(2) Notwithstanding anything contained in Section 28 of the Travancore Contract Act, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

The conduct of the business.

12. Subject to contract between the partners—

(a) every partner has a right to take part in the conduct of the business;

(b) Every partner is bound to attend diligently to his duties in the conduct of the business;

(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion, before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners ; and

(d) every partner has a right to have access to and to inspect and copy any books of the firm.

Mutual rights and liabilities.

13. Subject to contract between the partners—

(a) a partner is not entitled to receive remuneration for taking part in the conduct of the business ;

(b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm ;

(c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits ;

(d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent per annum ;

(e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him ;

(i) in the ordinary and proper conduct of the business ; and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances ; and

(f) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

The property of the firm.

14. Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired by purchase or otherwise, by or for the firm, or for the purpose and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appear, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

Application of the property of the firm.

15. Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Personal profits earned by partners.

16. Subject to contract between the partners—

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm ; and

(b) if a partner carries on any business of the same nature as and competing wit that of the firm, he shall account for and pay to the firm all profits made by him in that business.

17. Subject to contract between partners—

Rights and duties of partners after a change in the firm.

(a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

(b) where a firm constitutes for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry so far as they may be consistent with the incidents of partnership at will; and

After the expiry of the term of the firm and

(c) where a firm constituted to carry out one or more advent res or under-takings carries out other adventures or undertakings the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

Where additional under-takings are carried out.

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES.

18. Subject to the provisions of this Act a partner is the agent of the firm for the purposes of the business of the firm.

Partner to be agent of the firm.

19. (1) Subject to the provisions of Section 22 the act of a partner which is done to carry on in the usual way business of the kind carried on by the firm binds the firm.

Implied authority of partner as agent of the firm.

The authority of a partner to bind the firm conferred by this section is called his "implied authority".

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(a) submit a dispute relating to the business of the firm to arbitration;

(b) open a banking account on behalf of the firm in his own name

(c) compromise or relinquish any claim or portion of a claim by the firm;

(d) withdraw a suit or proceeding filed on behalf of the firm;

(e) admit any liability in a suit or proceeding against the firm;

(f) acquire immovable property on behalf of the firm;

(g) transfer immovable property belonging to the firm or

(h) enter into partnership on behalf of the firm.

20. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Extention and restriction of partner's implied authority.

Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

21. A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence in his own case, acting under similar circumstances, and such acts, bind the firm.

Partner's authority in a emergency.

22. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Mode of doing act to bind firm.

23. An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary cocurse of business.

Effect of admission by partner.

24. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm, operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Effect of notice to acting partner.

25. Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

Liability of a partner for acts of the firm.

26 Where by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or, with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of the firm for wrongful acts of a partner.

27. Where—

Liability of firm for misapplication by partners.

(a) a partner acting within his apparent, authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

28 (1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

Holding out.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part there of shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

29. (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

Rights of transferee of a partner's interest.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the dates of the dissolution.

30. (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

Minors admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in Section 48 :

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the the firm, and such notice shall determine his position as regards the firm ;

Provided that, if he fails to give such notice he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.

(7) Where such person becomes a partner —

(a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner

(a) his rights and liabilities shall continue to be those of a minor under this Section up to the date on which he gives public notice,

(b) his share shall not liable for any acts of the firm done after the date of the notice, and

(c) he shall be entitled to sue the partner for his share of the property and profits in accordance with sub-section (4)

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of Section 28.

CHAPTER V.

INCOMING AND OUTGOING PARTNERS.

Introduction of a partner.

31. (1) Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of Section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement of a partner.

32. (1) A partner may retire—

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties of any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.

Provided that a retired partner is not liable to a third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

Explusion of a partner.

33. A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

(2) The provisions of sub-section (2), (3) and (4) of Section 32 shall apply to an expelled partner as if he were a retired partner.

Insolvency of a partner.

34. (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as insolvent the estate

of a partner so adjudicated is not liable for any act of the firm and the firm is not liable f r any act of the insolven', done after the da'e on which the order or adjudication is made.

35. Where under a contract between the partners the firm is not dissolved by the death of a partner the estate of a deceased partner is not liable for any act of the firm done after his death.

Liability of estate of deceased partner.

36. (1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary he may not,—

Rights of outgoing partner to carry on competing business.

(a) use the firm name.

(b) represent himself as carrying on the business of the firm, or

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within specified period or within specified local limits; and notwithstanding anything contained in Section 28 of the Travancore Contract Act III such agreement shall be valid if the restrictions imposed are reasonable.

Agreements in restraint of trade.

37 Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate then, in the absence of contract to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representative, to such share of the profits made since he ceased to be partner as may be attributable to the use of his share of the property of the firm, or to interest at the rate of six per cent. per annum on the amount of his share in the firm:

Rights of outgoing partner in certain cases to share subsequent profits.

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner or the outgoing partner, or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

Revocation of continuing guarantee by change in firm.

38. A continuing guarantee given to a firm or to a third party in respect of the transactions of a firm is in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

CHAPTER VI.

Dissolution of a Firm.

39. The Dissolution of partnership between all the partners of a firm is called the "dissolution of the firm."

Dissolution of firm.

Dissolution by agreement.

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Compulsory dissolution.

41. A firm is dissolved —

(a) by the adjudication of all the partners or of all the partners but one as insolvent or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership :

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

Dissolution of the happening of certain contingencies.

42. Subject to contract between the partners a firm is dissolved.

(a) if constituted for a fixed term, by the expiry of that term.

(b if constituted to carry out one or more adventures or undertaking , by the completion thereof ;

(c) by the death of a partner ; and

(d) by the adjudication of a partner as an insolvent.

Dissolution by notice of partnership at will.

43. (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

Dissolution by Court

44 At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely :—

(*a*) that a partner has become of unsonud mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner.

(*b*) that a partner other than the partner suing, has become in any way permanently incapable of performing his duties as partner ;

(*c*) that a partner, other than the partner, suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business ;

(*d*) that a partner other than the partner suing, wilfully or permanently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business or otherwise, so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him ;

(e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 47 of Order XXI of the First Schedule to the Code of Civil Procedure, 1100, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner ;

(*f*) that the business of the firm cannot be carried on save at a loss ;

(g) on any other ground which renders it just and equitable that the firm should be dissolved

45. (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Liability for acts of partners done after dissolution.

Provided that the estate of a partner who dies, or who is adjudicated an insolvent or of a partner who, not having been known to the person dealing with the firm to be a parter, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner.

46. On the dissolution of a firm every partner or his representative is entitled, as against all the other partners of their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

Right of partners to have business wound up after dissolution.

47. After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise;

Continuing authority of partners for purposes of winding up.

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Mode of settlement of accounts between partners

48. In settling the accounts of a firm after dissolution the following rules shall, subject to agreement by the partners, be observed :—

(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order, -

(i) in paying the debts of the firm to third parties,

(ii) in paying to each partner rateably what is due to him from the firm for advance as distinguished from capital,

(iii) in paying to each partner rateably what is due to him on account of capital, and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share Profits.

49. Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm, and shall be applied in the first instance in payment of the debts of the firm if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

Payment of firm debts and of separate debts.

50. Subject to contract between the partners, the provisions of clause (a) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up;

Personal profits earned after dissolution.

Provided that where any partner or his representative has bought the good will of the firm, nothing in this section shall affect his right to use the firm name.

51. Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

Return of premium on premature dissolution.

(a) the dissolution is mainly due to his own misconduct, or

(b) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

52. Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

Rights where partnership contract or is resinded for fraud or misrepresentation.

(a) to a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him

(b) to rank as a creditor of the firm in respect of any payment made by him towards the debts or the firm and

(c) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm,

53. After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Right to restrain use of firm name or firm property.

Provided that where any partner or his representative has bought the good will of the firm, nothing in this section shall affect his right to use the firm name.

54. Partners may upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits and notwithstanding anything contained in Section 28 of the Travancore Contract Act such agreement shall be valid if the restrictions imposed are reasonable.

Agreements in restraint of trade.

Sale of good will after dissolution.

55. (1) In settling the accounts of a firm after dissolution, the good will shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Rights of buyer and seller of good will.

(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

(a) use the firm name,
(b) represent himself as carrying on the business of the firm, or
(c) solicit the custom of persons who were dealing with the firm before its dissolution.

Agreements in restraint of trade.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits and notwithstanding anything contained in Section 28 of the Travancore Contract Act, such agreement shall be valid if the restrictions imposed are reasonable.

CHAPTER VII.

Registration of forms.

Appointment of Registrar.

56. (1) Our Government may appoint a Registrar of Firms for purposes of this Act.

(2) The Registrar shall be deemed to be a public servant within the meaning of Section 15 of the Travancore Penal Code.

(3) The Registrar of Joint Stock Companies shall be ex-officio Registrar of Firms.

Application for registration.

57. (1) The Registration of a firm may be effected at any time by sending by post or delivering to the Registrar a statement in the prescribed form and accompanied by the prescribed fee, stating—

(*a*) the firm name,
(*b*) the place or principal place of business of the firm,
(*c*) the names of any other places where the firm carries on business,
(*d*) the date when each partner joined the firm,
(*e*) the names in full and permanent addresses of the partners, and
(*f*) the duration of the firm

The statement shall be signed by all the partners or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely :—

"Maha Raja" "Maha Rani" "Rani" "Princess", "Royal" "Crown" "Emperor" "Empire" "Empress", "Imperial" "King" "Queen" "Government" "State", or words expressing or implying Our sanction,

approval or patronage or that of His Majesty the King Emperor or the Government of India except where the consent of Our Government to the use of words as part of the name of the firm, signifying Our sanction, approval or patronage, is obtained by an order in writing under the hand of the Chief Secretary to Our Government, or in the case of words expressing or implying the sanction, approval or patronage of His Majesty the King Emperor, or the Government of India, the Governor General in Council signifies his consent to the use of such words as part of the name of the firm by order in writing under the hand of one of the Secretaries to the Government of India.

58. When the Registrar is satisfied that the provisions of Section 57 have been duly complied with he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

Registration.

59. (i) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under Section 57.

Recording of alterations in firm name and principal place of business.

(2) When the Registrar is satisfied that the provisions of Sub-Section (1) have been duly complied with he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under Section 58.

60. When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under Section 58.

Noting of closing and opening of branches.

61. When any partner in a registered firm alters his name or permanent address an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in Section 60.

Noting of changes in names and addresses of partners.

62. (1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms and shall file the notice along with the statement relating to the firm filed under Section 58.

Recording of changes in and dissolution of a firm.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner and the Registrar shall deal with the notice in the manner provided in a sub-section (1)

Recording of with-drawal of a minor.

63. (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

Rectification of mistakes.

(2) On application made by all the parties who have signed an document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

64. A court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision, and the Registrar shall amend the entry accordingly.

Amendment of Register by order of Court.

65. (1) The Registear of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

Inspection of Register and filed documents.

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such fee as may be prescribed.

66. The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

Grant of copies

67. (1) Any statement, intimation, or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

Rules of evidence

(2) A certified copy of an entry relating to a firm in the Ragister of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

68. (1) No suit, to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court, by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm.

Effect of non-registration

(2) No suit to conforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm,

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

(*a*) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(*b*) the powers of an Official Receiver or Court under the Travancore Insolvency Act, 1108, to realise the property of an insolvent partner.

(4) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in Travancore, or

(*b*) to any suit or claim of set-off not exceeding one hundred rupees in value, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

Penalty for furnishing false particulars.

69 Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false nor does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both.

Power to make rules.

70. (1) Our Government may make rules prescribing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the Inspection of documents in the custody of the Registrar of Firms or for copies from the Registrar of Firms :

Provided that such fees shall not exceed the maximum fees specified in the Schedule.

(2) Our Government may make rules :—

(*a*) prescribing the form of statement under Section 50 and of the verification thereon :

(*b*) requiring statements, intimations and notices under Sections 58, 60, 61 and 62 to be in the prescribed form, and prescribing the form thereof:

(*c*) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein ;

(*d*) regulating the procedure of the Registrar when disputes arise ;

(*e*) regulating the filing of documents received by the Registrar ;

(*f*) prescribing conditions for the inspection of original documents ;

(*g*) regulating the grant of copies ;

(*h*) regulating the elimination of registers and documents ;

(*i*) providing for the maintenance and form of an Index to the Register of Firms ; and

(*j*) generally, to carry out the purpose of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

CHAPTER VIII.

SUPPLEMENTAL.

Mode of giving public notice.

71. A public notice under this Act is given—

(a) where it relates to the retirement or expulsion of a partner from a registered firm or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of firms under Section 62, and by publication in Our Government Gazette, and

(b) in any other case, by publication in Our Government Gazette

Savings.

72. Nothing in this Act shall affect or be deemed to affect —

(a) any right title, interest, obligation or liability already acquired accrued or incurred before the commencement of this Act, or

(b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act, or

(c) anything done or suffered before the commencement of this Act, or

(d) any rule of insolvency relating to partnership, or

(e) any rule of law relating to partnership or otherwise not inconsistent with this Act.

SCHEDULE.

MAXIMUM FEES.

(See Sub-Section (1) of Section 70)

Document or act in respect of which the fee is payable.	*Maximum fee.*
Statement under Section 57	Three rupees
Statement under Section 59	One rupee
Intimation under Section 60	One rupee
Intimation under Section 61	One rupee
Notice under Section 62	One rupee
Application under Section 63	One rupee
Inspection of the Register of Firms under sub-section (1) of Section 65	Eight annas for inspecting one volume of the Register.
Inspection of documents relating to a firm under sub-section (2) of Section 65	Eight annas for the inspection of all documents relating to one firm.
Copies from the Register of Firms	Four annas for each hundred words or part thereof

STATEMENT OF OBJECTS AND REASONS.

The absence of a statute embodying the principles of law applicable to partnership has been felt for a long time past. Our Courts have been following the British Indian Contract Act or the English Partnership Act according as they thought the one or the other contained the rule consistent

with justice equity and good conscience. Partnership transactions are increasing with the increasing activities in trade and commerce, and it is of the very essence of commercial prosperity of the State that those engaged in commercial undertakings and those having dealings with them should know definitely what their rights and obligations are, it is also necessary that commercial laws should as far as possible be uniform.

Provision is also necessary for the registration of partnership concerns so that those dealing with such concerns may easily know with whom they are dealing. Those claiming relief against partnership concerns are always put to unnecessary expenditure and difficulties in ascertaining the persons against whom a suit has to be instituted. It is however deemed inadvisable to make registration compulsory. With these objects in view this Bill is prepared on the lines of the British Indian Partnership Act, 1932 (Act No. IX of 1932). The notes on Clauses appended to the bill explain the principles embodied in the various clauses.

NOTES ON CLAUSES.

Clause 1—Sub-clause (3) provides that the whole of the Act except Section 68 shall come into force at once, but that Section 68 shall come into operation only one year thereafter. This is to obviate any hardship that might arise by reason of Section 68 which prescribes certain disabilities in the case of firms that are not registerd under the Act.

Clause 2—deals with certain terms and expressions used in the Act. Sub-clause (e) adopts the definitions contained in the Contract Act, a Bill relating to which is introduced along with this Bill. As the law of partnership is only a branch of the general law of contracts, the above arrangement is adopted.

Clause 3—provides that except where it is inconsistent with the express provisions of this Act, the law of contract as provided for in the Contract Act shall apply.

Clauses 4 to 6—deal with the various principles in the legal conception of partnership.

Clause 4 defines the term "partnership" and clause 6 contains the various tests for determining in a given case whether it is a partnership as defined in this Act. Several of these principles are discussed and adopted by our High Court. (Vide 20 T. L. R. 33; 45 T. L. R. 67 (F. B.); 28 T. L. J. 128 13 T. L. J. at 182 and 3 S. D. 22.)

Clause 5 lays down the principles that partnership arises from contract and not from status. This is particularly illustrated in the case of the Hindu joint family carrying on a family trade. This only follows the principle laid down in 2 Travancore Law Magazine 540.

Clause 7—defines the expression "partnership at will"

Clause 8—allows the formation of partnership for particular adventures or undertakings.

Clause 9—lays down the duties of partners to one another in relation to the partnership business. XII T. L. J. 177 indicates generally the acceptability of many of the principles herein contained.

Clause 10—embodies in statute form what is the ordinary law, namely that a person must make good the loss sustained by another as result of his fraud.

Clause 11 grants freedom of contract to the partners and allow as a term of that contract an agreement in restraint of any other trade.

Clauses 12 to 17—lay down the rules relating to the conduct of the partnership business and the mutual rights and liabilities of the partners. These are always subject to contract between the partners.

Clauses 18 to 21—embody the wellknown principle that one partner is an agent of the others for purposes of the partnership business, subject of course to certain limitations imposed by law or contract.

47 T L R. 60; 51 T. L. R. 56 and 24 T L J. 1327, are cases in which most of the principles contained here-in are adopted.

Clause 22—prescribes the way in which acts have to be done or instruments executed so as to bind the firm.

Clauses 23 and 24—deal with the effect of admission by a partner and of notice to a partner who habitually acts in the business of the firm

Clause 25—provides that the liability of partners is joint and serveral.

Clauses 26 and 27—prescribes the tortious acts of a partner for which firm is liable.

Clause 28—deals with the well-known doctrine of holding out.

Clause 29—deals with the rights of the assignee ormortgagee of a partner's share in the partnership business. The principle has been followed in 32 T. L. R. 211.

Clause 30—deals with the rights and liabilities of a partnership. The principle herein contained is adopted in XIII T. L. R. 135 and XIII T L. 93.

Clause 31—deals with the introduction of a new partner. The principle contained in this clause has been discussed and adopted in VI T. L. J. 439.

Clause 32 deals with the retirement of a partner and his liability to third parties. In regard to debts before retirement, liability continues unless discharged by agreement. (See 3 T. L. J. 64 which adopts the principle.) Sub-clause 3 adopts the principle contained in Section 17, sub-section 3 of the English Partnership Act 1890 which was adopted by Our High Court, in 43 T. L. R. 8 in preference to the principle adopted in Section 264 of the Indian Contract Act (now repealed.)

Clauses 33 to 35—deal with the expulsion, insolvency or death of a partner and the consequences flowing therefrom so far as it concerns the property of such partner.

Clause 36—deals with the restrictions imposed on the activities of an outgoing partner.

Clause 37—declares the rights of an outgoing partner or his representative to a share of the profits or interest pending the final settlement.

Clause 38- deals with the revocation of a continuing guarantee by change in the firm.

Clauses 39 to 49—deal with the dissolution of a partnership. Most of the principles contained in Clauses 39 to 48 have been discussed and adopted in several cases of our High Court. Vide 14 T. L. R. 79, 24 T. L. R. 94; 43 T. L. R. 8; 11 T. L. J. 140; 18 T. L. J. 115 and 194 and 20 T L. J. 557. In adopting the principle contained in Clause 49 the Bill makes a departure

from the rule laid down in III T. L. J. 78 and 37 T. L. R. 178. In these cases the Court preferred to follow certain American rulings and the opinions of text-book writers on the ground that any other rule is opposed to justice, equity and good conscience. This is however the principle adopted in the English Partnership Act of 1890, the Indian Contract Act (since repealed) and the Indian Partnership Act, 1932. It is a rule based on convenience, and experience of centuries shows that it is still a practical rule, adaptable in the administration of the estate of a dissolved partnership. Since commercial enterprise within the State is becoming more intimately connected with commerce outside, especially in British India, it is desirable to have uniformity of law in this respect also.

Clause 50—states that profits made by any surviving partner after dissolution of the firm shall be paid to the firm.

Clause 51—provides for the return of premium in case of premature dissolution of a partnership for a fixed term, otherwise than by the death of a partner.

Clause 52—deals with the rights of a partner where the partnership contract has been rescinded on account of misrepresentation or fraud.

Clause 53—gives power to the partner after dissolution of the firm to restrain a partner from carrying on business in the firm-name until the affairs of the firm have been completely wound up. The clause is complementary to clause 50.

Clause 54—relates to agreements in restraint of trade as between partners upon or in anticipation of the dissolution of a firm.

Clause 55—definitely includes "goodwill" among the assets of a firm and provides for its sale.

Clause 56—deals with the appointment by Government for a Registrar of firms for purposes of the Act. By sub-clause (3) the Registrar of Joint Stock Companies is made ex officio Registrar of firms.

Clause 57—enumerates the particulars to be filled up in an application for registering a firm.

Clause 58—deals with the recording of the entry and the filing of the statement in the Register of firms.

Clause 59—provides for the recording of changes in the name and the place of business of a firm.

Clauses 60 to 63—deal with the noting by Registrar of closing and opening of branches, alterations in names and addresses of partners, recording of changes in and dissolution of a firm, withdrawal of a minor as well as rectification of mistakes.

Clause 64—gives the civil courts power of correction in cases of dispute.

Clauses 65 to 67—deal with the inspection of Registers and documents, taking of copies and rules of evidence as regards such entries and copies.

Clause 68—deals with the consequencees which flow from non-registration of a firm.

Clause 69—imposes a penalty for furnishing false particulars to the Registrar.

Clause 70—empowers Government to frame rules regarding registration of firms.

Clause 71—gives the mode in which public notice is given under the provisions of this Act.

Clause 72—deals with the savings of existing rights and existing rules of law not specifically affected.

S. KRISHNA PILLAI,
Legal Remembrancer to Government.

Annexure V.

THE TRAVANCORE ARBITRATION BILL.

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SCHEDULE I

Provisions to be implied in submissions.

SCHEDULE II.

FORM 1. Submission to single arbitrator.
" 2. Submission of particular dispute to single arbitrator.
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THE TRAVANCORE ARBITRATION BILL.

Preamble.

Whereas it is expedient to enact a law relationg to arbitration by agreement without the intervention of a Court of Justice, it is hereby enacted as follows : —

Short title, extent and commencement.

1. (1) This Act may be called "The Travancore Arbitration Act 11 ."

(2) It extends to the whole of Travancore ; and

(3) It shall come into force on

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context—

(*a*) "the Court" means the Court where, if the subject matter submitted to arbitration were the subject of a suit, the suit would have to be instituted ; and

(*b*) "submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

Exclusion of certain provisions of the Civil Procedure Code in certain cases where Act applies.

3. Rules 17 to 21 of Order XXXIX of the Code of Civil Procedure shall not apply to any submission or arbitration to which the provisions of this Act for the time being apply ;

Provided that nothing in this Act shall affect any arbitration pending in any Court at the commencement of this Act, but shall apply to every arbitration commenced after the commencement of this Act under any agreement or order previously made.

Submission to be irrevocable except by leave of court.

4. A submission, unless a different intention is expressed therein, shall be irrevocable, except by leave of the Court.

Provisions implied in submissions.

5. A Submission, unless a different intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule, in so far as they are applicab'e to the reference under submission.

Reference to arbitrator to be appointed by third person.

6. The parties to a submission may agree that the reference shall be to an arbitrator or arbitrators to be appointed by a person designated therein.

Such person may be designated either by name or as the holder for the time being of any office or appointment.

Illustration.

The parties to a submission may agree that any dispute arising between them in respect of the subject matter of the submission shall be

referred to an arbitrator to be appointed by the Alleppey Chamber of Commerce or, as the case may be, to an arbitrator to be appointed by the president for the time being of the Alleppey Chamber of Commerce.

Power for the Court in certain cases to appoint an arbitrator, umpire or third arbitrator.

7. (1) In any of the following cases:—

(a) where a submission provides that the reference shall be to a single arbitrator, but no person is mentioned by name, and all the parties do not, after differences have arisen, concur in the appointment of a particular arbitrator;

(b) if an appointed arbitrator, neglects or refuses to act, or is incapable of acting or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy.

(c) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him:

(d) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, or is removed and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy;

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in appointing an arbitrator, umpire or third arbitrator.

(2) If the appointment is not made within seven clear days after the service of the notice the Court may on application by the party who gave the notice, and after giving the other party an opportunity of being heard appoint an arbitrator, umpire or third arbitrator who shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to supply vacancy.

8. Where a submission provides that the reference shall be two arbitrators, one to be appointed by each party, then, unless a different intention is expressed therein:

(a) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies or is removed, the party who appointed him may appoint a new arbitrator in his place;

(b) if, on such a reference one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party having appointed his arbitrator, has served the party making default with a written notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court may set aside any appointment made in pursuance of clause (b) of this section.

Powers of arbitrator.

9. The arbitrators or umpire acting under a submission shall, unless a different intention is expressed therein,

(a) have power to administer oaths to the parties and witnesses appearing;

(b) have power to state a special case for the opinion of the Court on any question of law involved; and

(c) have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Awards to be signed and filed.

10. (1) When the arbitrators or umpire have made their award they shall sign it and shall give notice to the parties of the making and signing thereof and of the amount of the fees and charges payable to the arbitrators or umpire in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any pasty to the submission or any person claiming under him and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award, cause the award, or a signed copy of it to be filed to the Court; and notice of the filing shall be given to the parties by the arbitrators or umpire.

(3) Where the arbitrators or umpire state a special case under Section 9 clause (b), the Court shall deliver its opinion thereon: and such opinion shall be added to, and shall form part of the award.

Power for Court to enlarge time for making award.

11. The time for making an award may, from time to time, be enlarged by order of the Court, whether the time for making the award has expired or not.

Power to remit award.

12. (1) The Court may, from time to time, remit the award to the reconsideration of the arbitrators or umpire.

(3) Where an award is remitted under sub-section (1), the arbitrators or umpire shall unless the Court otherwise directs, make a fresh award within three months after the date of the order remitting the award.

Power to set aside award.

13. Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the Court may set aside the award.

Award when filed to be enforceable as a decree.

14. (1) An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall (unless the Court remits it to the reconsideration of the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the Court.

(2) An award may be conditional or in the alternative.

Illustration.

A dispute concerning the ownership of a diamond ring is referred to arbitration. The award may direct that the party in possession shall pay the other party Rs. 1,000 the said sum to be reduced to Rs. 5 if the ring is returned within fourteen days.

15. Where an arbitrator or umpire has misconducted himself the Court may remove him.

Power to remove arbitrator or umpire.

16 Any order made by the Court under this Act may be made on such terms as to costs or otherwise as the Court thinks fit.

Costs.

17. The forms set forth in the second schedule, or forms similar thereto, with such variations as the circumstances of each case require, may be used for the respective purposes there mentioned, and, if used, shall not be called in question.

Forms.

18. Where any party to a submission to which this Act applies, or any person claiming under him, commences any legal proceedings against any other party to the submission, or any person claiming under him, in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings apply to the Court to stay the proceedings ; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power to stay proceedings where there is a submission.

19. Our High Court may make rules consistent with this Act as to—

Power for High Court to make rules.

(*a*) the filing of awards and all proceedings consequent thereon or incidental thereto ;

(*b*) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto ;

(*c*) the staying of any suit or proceeding in contravention of a submission to arbitration ; and

(*d*) generally, all proceedings in Court under this Act.

20. The provisions of this Act shall be binding on the Government

Government to be bonnd.

THE FIRST SCHEDULE.

(*See Section 5.*)

Provisions to be implied in submissions.

I. If no other mode of reference is provided, the reference shall be to a single arbitrator.

II. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

III. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may, from time to time, enlarge the time, for making the award.

IV. If the arbitrators have allowed their time or extended time to expire without making an award or have delivered to any party to the submission, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

V. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him, may, from time to time, enlarge the time for making his award.

VI. The parties to the reference and all persons claiming through them respectively shall, subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute, and shall, subject as aforesaid produce before the arbitrators or umpire, all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

VII. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath.

VIII. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

IX. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner, those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

The Second Schedule.

(*See Section 17.*)

FORM I.

Submission to single arbitrator.

In the matter of the Travancore Arbitration Act, 11 .

Whereas differences have arisen and are still subsisting between A. B. of.............. and C. D. of.. concerning.....................

Now we, the said A. B. and C. D. do hereby agree to refer the said matters in difference to the award of X. Y.

(Signed) A. B.
C. D.

Dated the..............11 .

FORM II.

SUBMISSION OF PARTICULAR DISPUTE TO SINGLE ARBITRATOR.

In the matter of the Travancore Arbitration Act, 11 .

Whereas differences have arisen and are still subsisting between A. B. of .... and C. D. of .... concerning.......................

Now we, the said A. B. and C. D. do hereby agree to refer the said matters in difference to the award XY.

(Signed) A. B.
C. D.

Dated the ....11 .

FORM III.

APPOINTMENT OF SINGLE ARBITRATOR UNDER AGREEMENT TO REFER FUTURE DIFFERENCES TO ARBITRATION.

In the matter of the Travancore Arbitration Act, 11 .

Whereas, by an agreement in writing, dated the............... day of .... 11............ and made between A. B. of .... and C. D. of .... it is provided that the differences arising between this parties thereto shall be referred to an arbitrator as therein mentioned.

And whereas differences within the meaning of the said provision have arisen and are still subsisting between the said parties concerning...............

Now we, the said parties A. B. and C. D. do hereby refer the said matters in differences to the award of XY.

(Signed) A. B.
C. D.

Dated the ....11 .

FORM IV.

ENLARGEMENT OF TIME BY ARBITRATOR BY ENDORSEMENT ON SUBMISSION.

In the matter of the Travancore Arbitration Act, 11 , and an arbitration between A. B. of.......... ..and C. D. of...........

I hereby enlarge the time of making my award in respect of the matters in difference referred to me by the within (or above) submission until the...........day of.............11 .

(Signed X Y.
Arbitrator.

Dated the.............11 .

FORM V.

SPECIAL CASE.

In the matter of the Travancore Arbitration Act, 11 , and an arbitration between A. B. of...........and C. D. of...........

The following special case is, pursuant to the provisions of Section 9, clause (b), of the said Act, stated for the opinion of the........................ (Here specify the court).

(Here state the facts concisely in numbered paragraphs.)
The questions of law for the opinion of the said Court are :—
First, whether ....
Secondly, whether......................................

(Signed) X. Y.
Arbitrator.

Dated the...........11 .

FORM VI.

AWARD.

In the matter of the Travancore Arbitration Act, 11 , and an arbitration between A. B. of.......... and C. D. of..........

Whereas in pursuance of an agreement in writing dated the........ day of...........11...........and made between A. B. of...............and C. D. of ....the said A. B and C. D. have referred to me, X. Y. the matters in difference between them concerning...........

(or as the case may be) :—

Now I, the said X Y, having duly considered the matters submitted to me, do hereby make my award as follows :—

I award—

(i) that..
(ii) that..

(Signed) X. Y.,
Arbitrator.

Dated the...........11 .

STATEMENT OF OBJECTS AND REASONS.

Order XXXIX of the Civil Procedure Code deals with arbitration proceedings relating to disputes which have arisen at the time of agreement to refer. They do not apply to an agreement to refer to arbitration any dispute which may arise in the future. They also require the agreement to refer either to name the particular arbitrator or to leave the court to appoint one. This restricted applicability of the provisions of the Civil Procedure Code has led to various practical difficulties. To facilitate the commercial operations in the State, it is necessary that the law relating to arbitration should be further extended in scope. Hence this Bill. It is based on the Indian Arbitration Act (IX of 1899).

S. KRISHNA PILLAI,
Legal Remembrancer to Government.

Annexure VI.

R. O. C. No. 131/39/Legis.

The following Bill, together with the Statement of objects and Reasons, is published as ordered by the Dewan, Under Rule 31 of the Travancore Legislative Rules.

(By order)

Huzur Cutcherry, Trivandrum, 30th January 1939.

M. K. NILAKANTA AIYAR, Ag. *Chief Secretary to Government.*

THE TRAVANCORE EQUITABLE MORTGAGE BILL.

Preamble.

Whereas it is expedient to provide for the hypothecation of immovable property by deposit of title-deeds thereof; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*a*) This Regulation may be called "The Travancore Equitable Mortgage Act."

(*b*) It extends to the Municipal areas within the Municipalities of Alleppey, Kottayam, Nagercoil, Parur, Quilon and Trivandrum, and to other Municipal areas or places to which it may be extended by notification published by Our Government in that behalf in Our Government Gazette.

(*c*) It shall come into force on such date as Our Government may notify in that behalf in Our Government Gazette.

Hypothecation of immovable property by deposit of title deed.

2. (1) Any person may, in any of the Municipal areas of Alleppey, Kottayam, Nagercoil, Parur, Quilon and Trivandrum and in any other Municipal area or place which Our Government may by notification in our Government Gazette specify in this behalf create an equitable mortgage on his immovable property by delivering for such purpose to his creditor or the agent of such creditor documents of title to the immovable property.

(2) Notwithstanding anything to the contrary contained in any law or custom, the rights and liabilities arising from such transaction shall be enforceable in the same manner as those arising under a duly executed deed of hypothecation of the immovable property, containing a personal covenant to pay.

STATEMENT OF OBJECTS AND REASONS.

Under the existing law, a hypothecation of immovable property can be made only under deed duly stamped and registered, but in commercial transactions such formalities often lead to delay and unexpected complications. To avoid these difficulties, and to facilitate commercial transactions, the law in other countries allows what is called an equitable mortgage. Of late, there has been incessant demand from many quarters for an enactment sanctioning such transactions Hence the Bill. It is made applicable in the first instance only to the Municipal areas of Alleppey, Kottayam, Nagercoil, Parur, Quilon and Trivandrum but power is vested in Government to extend its operations to other places.

S. KRISHNA PILLAI,
Legal Remembrancer to Government.

Annexure VII.

R. O. C. No. 151 of 39/Legislative.

The following Bill, together with the Statement of Objects and Reasons, is published as ordered by the Dewan, under Rule 31 of the Travancore Legislative Rules.

(By order)

Huzur Cutcherry,
Trivandrum, 30th January 1939.

M. K. NILAKANTA AIYAR,
Ag. Chief Secretary to Government.

TRAVANCORE TELEPHONE BILL.

AN ACT TO MAKE PROVISIONS RELATING TO TELEPHONES IN TRAVANCORE.

PART I.

PRELIMINARY.

Where it is expedient to take provisions relating to telephones in Travancore ; It is hereby enacted as follows ;

Preamble.

Short title, extent and commencement.

1. (i) This Act may be called "The Travancore Telephone Act, 1114."
(ii) It extends to the whole of Travancore.
(iii) It shall come into force at once.

Definition.

2. In this Act, unless there is something repugnant in the subject or context,—

Telephone.

(i) "Telephone' means an electric galvanic or magnetic telephone and includes appliances and apparatus for transmiting or making or receiving telephonic or other communications by means of electricity, galvanism or magnetism.

Message.

(ii) "Message" means any communication sent or received by telephone or given to a Telephone Officer to be sent by telephone or to be delivered.

Telephone line.

(iii) "Telephone line" means an aerial, underground, or under water wire, wires or cable used for the purpose of telephone communication, with or without any casing, coating, tube or pipe enclosing the same, erected above ground or laid under ground or under water and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same.

Post.

(iv) "Post" means a post, pole, standard, stay, strut or other aboveground contrivance for carrying, suspending or supporting a telephone line,

(v) "Telephone Authority" means the Electrical Chief Engineer and includes any officer appointed in this behalf by name or by virtue of his office by our Government to perform all or any of the functions of the Telephone Authority under this Act.

Telephone authority.

(vi) "Telephone Officer" means any person employed either permanently or temporarily in connection with a telephone established, maintained or worked by Our Government or by a person licensed under this Act.

Telephone Officer.

(vii) "Local Authority" means any Municipal Council or other authority legally entitled to or entrusted by Our Government with the control or management of any Municipal or Local Fund.

Local authority.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

3. Within Travancore, Our Government shall have the exclusive privilege of establishing, maintaining and working telephones :

Exclusive privileges of Government in respect of telephones.

Provided that Our Government may at their discretion grant a license, on such conditions and in consideration of such payments as they think fit, to any person to establish, maintain or work a telephone within any part of Travancore:

Power to grant licenses.

Provided also that nothing in this section shall affect the establishment, maintenance or working of any telephone by the British Government under such arrangements as has been or may from time to time be made by Our Government.

British Government telephonic system not affected.

4. (i) On the occurence of any public emergency or in the interests of public safety, Our Government or any officer specially authorised by Our Government in this behalf, may—

Power for Government to take possession of licensed telephones and to order interception of messages.

(a) take temporary possession of any telephone established, maintained or worked by any person licensed under this Act, or

(b) order that any message or class of messages to or from any person or class of persons or relating to any particular subject brought for transmission by or transmitted or received by any telephone established, maintained or worked under this Act by Our Government or any person licensed shall not be transmitted or shall be intercepted or detained or shall be disclosed to Our Government or an officer thereof mentioned in the order,

(ii) If any doubt arises as to the existence of a public emergency or whether any act done under sub-section (i) was in the interests of the public safety a certificate signed by the Chief Secretary to Our Government shall be conclusive proof on the point

Power to make rules.

5. (i) Our Government may from time to time by notification in the Government Gazette make rules consistent with this Act for the conduct of all or any telephones established, maintained or worked by Our Government or by persons licensed under this Act.

(ii) Rules made under this section may provide for all or any of the following among other matters, *i. e.*, to say,

(*a*) the rates at which and the other conditions and restrictions subject to which messages shall be transmitted,

(*b*) the precautions to be taken for preventing the improper interception or disclosure of messages,

(*c*) the period for which and the conditions subject to which messages and other documents belonging to, or being in the custody of Telephone Officers shall be preserved, and

(*d*) the fees to be charged for searching for messages or other documents in the custody of any Telephone Officer.

(iii) When making rules for the conduct of any telephone estabblished, maintained or worked or to be established, maintained or worked by any person licensed under this Act, Our Government may by the rules prescribe fines for any breach of the same:

Provided that the fine so perscribed shall not exceed the following limits, namely,

(i) when the person licensed under this Act is punishable for the breach one thousand Rupees and in the case of a continuing breach, a further fine of two hundred Rupees for every day after the first during the whole or any part of which the breach continues;

(ii) when a servant of the person so licensed or any other person is punishable for the breach, one-fourth of the amounts specified in Clause (i)

Revocation of licenses.

6. Our Government may at any time revoke any license granted under Section 4 on the breach of any of the conditions therein contained or in default of any payment of any consideration payable thereunder.

Government not responsible for loss or damage.

7. Our Government shall not be responsible for any loss or damage which may occur in consequence of any Telephone Officer failing in his duty with respect to the receipt, transmission or delivery of any message and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

PART III.

POWER TO PLACE TELEPHONE LINES AND POSTS.

8. The Telephone Authority may, from time to time, place and maintain a telephone line under, over, along or across and posts in or upon any immovable property:

Power for telephone Authority to place and maintain telephone lines and posts.

Provided that

(*a*) the Telephone Authority shall not exercise the powers conferred by this section except for the purposes of a telephone established or maintained by Our Government or to be so established or maintained;

(*b*) Our Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the Telephone Authority places any telephone line or post; and

(*c*) except as hereinafter provided, the Telephone Authority shall not exercise those powers in respect of any property vested in or under the control or management of any Local Authority without the permission of that Authority; and

(*d*) in the exercise of the powers conferred by this section, the Telephone Authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than that of Our Government or that referred to in Clause (*c*) shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

9. The Telephone Authority may at any time for the purpose of examining, repairing, altering or removing any telephone line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Power to enter on property to repair or remove telephone lines or posts.

Provisions applicable to property vested in or under the control or managemet of Local Authorities.

10. Any permission given by a Local Authority under Sectiou 8 Clause (*c*) may be given subject to such reasonable conditions as that Authority thinks fit to impose as to the payment of any expenses to which the Authority will necessarily be put in consequence of the exercise of the powers conferred by that section or as to the time or mode of execution of any work or as to any other thing connected with or relative to any work undertaken by the Telephone Authority under those powers.

Power for Local Authority to give permission under section 8, clause (c) subject to conditions

11. When under the foregoing provisions of this Act, a telephone line or post has been placed by the Telephone Authority under, over, along, across, in or upon any property vested in or under the control or management of a Local Authority and the Local Authority, having regard to circumstances which have arisen since the telephone line or post so placed, considers it expedient that it should be removed or that its position should be altered, the Local Authority may require the Telephone Authority to remove it or alter its position, as the case may be.

Power for Local Authority to require removal or alteration of telephone lines or posts.

12. The Telephone Authority may for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or management of a Local Authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water or of any drain (not being a main drain):

Power to alter position of gas or waterpipes or drains.

Provided that,

(*a*) when the Telephone Authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so specifying the time at which it shall begin to do so to the Local Authority and when the pipe or drain is not under the control of the Local Authority, to the person under whose control the pipe or drain is

(*b*) A Local Authority or person receiving no ice under Clause (*a*) may send a person to superintend the work and the Telephone Authority shall execute the work to the reasonable satisfaction of the person so sent.

13. If any dispute arises between the Telephone Authority and a Local Authority in consequence of the Local Authority refusing the permission referred to in Section 8, Clause (*c*) or prescribing any condition under Section 10 or in consequence of the Telephone Authority omitting to comply with the requisition made under Section 11 or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by Our Government.

Disputes between Telephone Authority and Local Authority.

Provision applicable to property other than that of Our Government.

14. (i) If the exercise of the powers mentioned in Section 8 in respect of the property referred to in Clause (*d*) of that section is resisted or obstructed, the District Magistrate within whose jurisdiction the property is situate may in his discretion order that the Telephone Authority shall be permitted to exercise them.

Exercise of powers conferred by Section 8 and disputes as to compensation in case of property other than that of Government.

inconvenience [necessarily] caused by the exercise of powers under this sub-section by the Commissioner or any person to whom he has lawfully delegated his powers or by the use of any force necessary for effecting an entrance under this sub-section.

(6) When any licence or permission is suspended or revoked, or when the period for which it was granted or within which application for renewal should be made has expired, whichever expires later, the grantee shall for all purposes of this Act or any rule or bye-law made under it be deemed to be without a license or permission until the order suspending or revoking the license or permission is cancelled or subject to sub-section (10), until the licence or permission is renewed, as the case may be.

(7) Every grantee of any licence or permission shall, at all reasonable times, while such licence or permission remains in force, produce the same at the request of the Commissioner.

(8) Whenever any person is convicted of an offence in respect of the failure to obtain a licence or permission or [to make a] registration required by the provisions of this Act or by any rule or bye-law made under this Act the magistrate shall in addition to any fine which may be imposed recover summarily and pay over to the Corporation the amount of the fee chargeable for the licence or permission for registration and may in his discretion also recover summarily and pay over to the [Council] such amount, if any, as he may fix as the costs of the prosecution.

(9) Such recovery of the fee under sub-section (8) shall not [by itself] entitle the person convicted to a licence or permission or to registration as aforesaid.

(10) The acceptance by the Corporation of the prepayment of the fee for a licence or permission or for registration shall not entitle the person making such prepayment to the license or permission or to registration, as the case may be but only to refund of the fee in case of refusal of the licence or permission or of registration but an applicant for the renewal of a licence or permission or registration shall until communication of orders on his application be entitled to act as if the license or permission or registration had been renewed; and save as otherwise specially provided in this Act if orders on an application for a licence or permission or for registration are not communicated to the applicant within forty-five days after the receipt of the application by the Commissioner the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application and subject to the law, rules, bye-laws, regulations and all conditions ordinarily imposed.

Appeals,

Appeals from Commissioner to Standing Committee.

385. (1) An appeal shall lie to the Standing Committee from—

(*a*) any notice issued or other action taken or proposed to be taken by the Commissioner—

(i) under Sections 131, 181, 188, 189, 190, 192, 247, 259 (3), 261 (1), 262 (1), 267 (1), 268, 269, 277, 286, 287, 288, 296 and 297; or

(ii) under any bye-law concerning house-drainage or the connection of housedrains with Municipal drains, or house-connections with water-supply or lighting mains;

(*b* any refusal by the Commissioner to approve a building site under Section 240, to grant permission to construct or reconstruct a building under Section 241 or 253, or

(*c*) any refusal by the Commissioner to grant a permission under Sections 128, 184 265, 296 (3), or

(*d*) any refusal by the Commissioner to grant a licence under Sections 286, 295, 306, 310, 315 or

(*e*) any order of the Commissioner made under Section 384, sub-section (4), suspending or revoking a licence or

(*f*) any other order of the Commissioner that may be made appealable by rules under Section 364.

[(2) If, on any such appeal, the Standing Committee reverses or substantially modifies any action taken or proposed to be taken by the Commissioner or any order passed by him, he may, within one month of the date of such decision, refer the matter to the Council, and pending the decision of the Council on such reference, the Commissioner shall not be bound to give effect to the decision of the Standing Committee.

The decision of the Standing Committee or where the matter has been referred to the Council as aforesaid, the decision of the Council shall be final.]

[386. In any case in which no time is laid down in the foregoing provisions of this Act for the presentation of an appeal allowed thereunder, such appeal shall subject to the provisions of Section 5 of the Travancore Limitation Act VI of 1100 be presented —

(*a*) where the appeal is against an order granting a licence or permission, within thirty days after the date of the publication of the order on the notice board of the Corporation, and

(*b*) in other cases within thirty days after the date of the receipt of the order or proceeding against which the appeal is made.

PART IV.

PENALTIES.

Establishing, maintaining or working telephone against the provisions of S. 3.

19. If any person establishes, maintains or works a telephone within Travancore otherwise than as permitted by a license granted under Section 3, he shall be punished with fine which may extend to one thousand rupees and with a further fine which may extend to five hundred rupees for every week or part thereof during which the line is maintained or worked.

Provided that in the case of telephones established, maintained or worked before this Act comes into force, no person shall be deemed to have committed any offence until the expiry of six months after the publication in Our Government Gazette of rules framed under Section 5.

Breach of condition of license.

20. If the holder of a license granted under Section 3 contravenes any condition contained in his license, he shall be punished with fine which may extend to one thousand rupees and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues.

Using unauthorised telephones

21. If any person, knowing or having reason to believe that a telephone has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telephone or performs any service incidental thereto or delivers any message for transmission by such telephone or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

Intrusion into exchange room, trespass in telephone office or obstruction.

22. If any person.

(*a*) without permission of competent authority enters the exchange room of a telephone office of Our Government or of a person licensed under this Act, or

(*b*) enters a fenced enclosure round such a telephone office in contravention of any rule or notice not to do so, or

(*c*) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or

(*d*) wilfully obstructs or impedes any such officer or servant in the performance of his duty.

he shall be punished with fine which may extend to five hundred rupees.

23. If any person does any of the acts mentioned in Section 22 with the intention of unlawfully learning the contents of any message or of committing any offence punishable under this Act, he may, in addition to the fine with which he is punishable under Section 22 be punished with imprisonment for a term which may extend to one year.

Unlawfully attempting to learn contents of messages

24. If any person intending.

(a) to prevent or obstruct the transmission or delivery of any message or

Intentionally damaging or tampering with telephones.

(b) to intercept or to acquaint himself with the contents of any message, or

(c) to commit mischief, damages, removes, tampers with or touches any, battery, machinery, telephone line, post or other thing, whatever being part of or used in or about any telephone or in the working thereof.

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

25. If in any case not provided for by Section 24, any person deals with any property and thereby wilfully or negligently damages any telephone line or post duly placed on such property in accordance with the provisions of this Act, he shall be liable to pay the Telephone Authority such expenses, if any, as may be incurred in making good such damage and shall also, if the telephone communication is thereby interrupted be punishable with fine which may extend to one thousand rupees;

Injury or interference with a telephone line or post.

Provided that the provisions of this section shall not apply whether such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has given the notice required by Section 17 (i).

26. If any Telephone Officer or any person not being a Telephone Officer but having official duties connected with any office which is used as a Telephone Office.

Telephone officer or other official making away or altering or unlawfully intercepting or disclosing messages or divulging purport of messages.

(a) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery, or

(*b*) wilfully and otherwise than in obedience of an order of Our Government or of an officer specially authorised by Our Government to make the order, omits to transmit or intercepts or detains any message or any part thereof or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message to any person not entitled to receive the same, or

(*c*) divulges the purport of any telephone message to any person not entitled to become acquainted with the same.

He shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Telephone officer fraudulently sending messages without payment.

27. If any Telephone Officer transmits by telephone any message on which the charge prescribed by Our Government, or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud Our Government or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Sending fabricated messages.

28. If any person transmits or causes to be transmitted by telephone a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Retaining a message delivered by mistake.

29. If any person fraudulently retains or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person or being required by a Telephone Officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Bribery.

30. A Telephone Officer shall be deemed a public servant within the meaning of Sections 153, 154, 155, 156 and 157 of the Travancore Penal Code, and in the definition of "legal remuneration" contained in the said Section 153, the word "Government" shall, for the purposes of this Act be deemed to include a person licensed under this Act.

Attempt to commit, and abetment of, offences.

31. Whoever attempts to commit, or abets the commission of any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

Statement of Objects and Reasons.

It is some time since the Government undertook the establishment of a Trunk Telephone connecting Travancore with the important centres in India. The work is in progress and is expected to be finished in a short time. Statutory provision has therefore to be made for the efficient and satisfactory establishment and working of the telephone by providing for penalties for interfering with such working and immunities against liability for any error due to defect in transmission or negligence of the officers employed and other cognate matters. It is also necessary to take the power to work telephones through the State and to prohibit private individuals from working any telephone in the State except under a license for the purpose issued by Government. Part I of the Bill deals with the definitions of important expressions. Part II deals with the privileges and powers of the Government relating to telephonic communications operated in the State. The proviso to Section 3 however provides that the Bill does not affect the establishment, maintenance or working of any telephone by the British Government under such arrangement as has been or may from time to time be made by the Government. Clause 4 of the Bill empowers Government to take possession of licensed telephones and to order interception of messages in cases of public emergency and in the interests of public safety. Clause 5 provides for the power of Government for framing rules for the efficient working of the Act. Clause 6 deals with the power of revocation of any license granted and Clause 7 provides for the immunity against any loss or damage which may occur in consequence of any telephone officer failing in his duty. Part III deals with the power to place telephone lines and posts. Clause 8 authorises the establishment of telephone lines under, over, along or across and posts in or upon any immoveable property. Provision is however made that the telephone authority shall pay full compensation to all persons interested, for any damage sustained by them by reason of the exercise of those powers. Part IV deals with the penalties that may be imposed or an infringement of any of the provisions of this Act.

S. Krishna Pillai,
Legal Remembrancer to Government.

Annexure VIII.

R. O. C. No. 130 of 39/Legislative.

The following Bill, together with the Statement of Objects and Reasons, is published as ordered by the Dewan, under Rule 31 of the Travancore Legislative Rules.

(By order)

Huzur Cutcherry, M. K. NILAKANTA AIYAR,
Trivandrum, 31st January 1939, *Ag. Chief Secretary to Government.*

A BILL TO AMEND THE TRAVANCORE CREDIT BANK ACT (ACT IV OF 1113).

Preamble.

Whereas it is expedient to amend the Travancore Credit Bank Act (Act IV of 1113) for a certain purpose: It is hereby enacted as follows:—

Short title and commencement.

8. (1) This Act may be called the Travancore Credit Bank (Amendment) Act, III—

(ii) It shall come into force at once.

Ammendment of Section 23 of Act IV of 1113.

2. In Section 23 of the Travancore Credit Bank Act, the followe ing words shall be inserted between the words "granted by it" and "may on default of du- payment," namely :—

"or on account of the loans of the Travancore State Land Mortgage Bank taken over under Section 17."

Statement of Objects and Reasons.

Under Section 23, the Credit Bank is entitled to realise as arrear of public revenue under the Revenue Recovery Act only amounts due on account of loans *granted by it*. Under Section 17 of the Act the Bank is authorised to take over the busines of the Travancore State Land Mortgage Bank which under the law is entitled to realise the amounts of its loans under the Revenue Recovery Act. But it is doubtful whether when such loans are taken assignment of by the Credit Bank under Section 17, it would be entitled to realise the amounts due thereunder as arrears of public revenue. The above amendment is proposed so as to vest the Bank also with power to realise such amounts by process under the Revenue Recovery Acts.

S. KRISHNA PILLAI,
Legal Rememberancer to Government

Annexure IX.

R. O. C. No. 174 of 39/Legislative.

The following Bill, together with the Statement of Objects and Reasons, is published as ordered by the Dewan, under Rule 31 of the Travancore Legislative Rules.

(By order)

HUZUR CUTCHERRY,
Trivandrum, February 1939.

M. K. NILAKANTA AIYAR,
Ag. Chief Secretary to Government,

THE TRAVANCORE NEGOTIABLE INSTRUMENTS ACT AMENDMENT BILL).

(A BILL TO AMEND THE TRAVANCORE NEGOTIABLE INSTRUMENTS ACT).

Preamble.

Whereas it is expedient to amend the Travancore Negotiable Instruments Act (Act II of 1075) for certain purposes; It is hereby enacted as follows:—

Short title and commencement.

1. (i) This Act may be called the Travancore Negotiable Instruments Amendment Act 111 .

(ii) It shall come into force at once.

Amendment of Section 8, Act II of 1075.

2. In Section 8 of the Travancore Negotiable Instruments Act II of 1075 (hereinafter referred to as the said Act), for the words "payable to or to the order of a payee" the words payable to order" shall be substituted.

Amendment of Section 12, Act II of 1075.

3. For Section 12 of the said Act the following section shall be substituted, namely:—

Negotiable Instrument.

"12. (i) "A Negotiable Instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer,

Explanation I. A promissory note, bill of exchange or cheque is payble to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation II. A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

Explanation III. Where a promissory note, bill of exchange or cheque, either originally or by indorsement is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or his order at his option.

(ii) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two or one or some of several payees."

Amendment of Section 15, Act II of 1075

4. Section 15 of the said Act shall be re-numbered as sub-section (1) of Section 15 and to the said section so re-numbered the following sub-section shall be added namely:—

"(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee."

Amendment of Section 50, Act II of 1075.

5. In Section 50 of the said Act, for the words "payable to the order of a specified person or to a specified person or order," the words "payable to order,' shall be substituted,

Amendment of Sections 65 and 65 Act II of 1075,

6. In Sections 65 and 85 of the said Act, for the words "twenty-four", the words "forty-eight" shall be substituted.

Insertion of a new Section 77 a, Act II of 1075,

7. After Section 77 of the said Act, the following section shall be added, namely:—

Excuse for delay in presentment for acceptance or payment.

"77—A. Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence, When the cause of delay ceases to operate presentment must be made within a reasonable time.

Amendment of Section 82, Act II of 1075.

8. In Section 82 of the said Act, after the word "shall" the words "notwithstanding any agreement relating to interest between any parties to the instrument" shall be inserted.

Amendment of Section 87, Act II of 1075

9. Section 87 of the said Act, shall be re-numbered as sub-section (1) of Section 87 and to the said section so re-numbered, the following sub-section shall be added namely:—

"(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course due to the bearer thereof notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation."

10. After Section 87 of the said Act, the following section shall be added, namely:—

Insertion of a new Section 87 A.

"87—A, Where any draft that is an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be indorsed by or on behalf of the payee, the bank is discharged by payment in due course."

Drafts drawn by one branch of a bank on another payable to order.

11. In Section 124 of the said Act, for the words "payable to or to the order of a specified person," the words "payable" to order" shall be substituted.

Amendment of Section 124, Act II of 1075.

12. To Section 134 of the said Act, the following explanation shall be added, namely:—

Amendment of Section 134 Act 2 of 1075.

Explanation:—A banker receives payment of a crossed cheque for a customer within the meaning of his section notwithstanding that he credits his customer's account with the amount of the cheque before receving payment thereof"

STATEMENT OF OBJECTS AND REASONS.

The Negotiable Instruments Act (II of 1075) is nearly forty years old and no change was made in it since its enactment. The British Indian Negotiable Instruments Act, (XXVI of 1881) on which is based the Travancore Negotiable Instruments Act has undergone material changes by the enactment of various amending Acts, such as Acts V of 1914, VIII of 1919, XXV of 1920, XII of 1921, XVIII of 1922, XXX of 1926, XXV of 1930 and XVII of 1934. The Travancore Banking Enquiry Committee have in paragraph 161 of their report recommended that the changes made in British India may be adopted here also as it is essential that there should be uniformity in this respect. Hence the Bill. The object of the important clauses is explained below in the notes on clauses.

NOTES ON CLAUSES.

1. The existing definition of the expression "Negotiable Instrument" has been altered in British India and brought on lines with the definition in the English Bills of Exchane Act, 1882. Clauses 2, 3, 5 and 11 provide for this change. Under the English law a bill is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it should be transferable. If therefor a drawer of a cheque in England desires it to be not negotiable the words 'not negotiable, should be stamped across the face of the cheque, and if he fails to do so the cheque would be treated as a negotiable instrument although the word 'bearer' printed on the cheque is scored through or the word 'order' is not substituted therefor. In India too the mercantile

community as well as the banks deal with cheques payable to a specified person without the addition of the words "or order" "or bearer" as cheques payable to that person or his order. It was ruled by the Bombay High Court that the custom was contrary to the Statute and hence illegal. It is necessary that the law on this point should be so altered as to make it consistent with the English law and the custom obtaining in India.

2. As doubts are entertained whether immunity in the case of a payee provided for by Section 87 will be available to an indorsee, provision is made in Clause 4, that the rules of law applicable to a payee are applicable to an indorsee as well.

3. The time allowed for a drawee to consider whether he will accept a bill of exchange is only twenty-four hours. This is found to be too short and causing great inconvenience. Hence it is changed to forty-eight. Clause 6 provides for this matter.

4. There is no provision at present for excusing delay in the presentment for payment or acceptance when the delay is caused by circumstances beyond the control of the holder. This is provided for by Clause 7.

5. The provisions of Section 82 are sometimes sought to be defeated by the setting up of contemperaneous oral agreements. Clause 8 is proposed to provide against this contingency.

6. Clause 9 is intended to provide that cheques originally drawn to bearer shall not lose their bearer - character notwithstanding any indorsement thereon whether in full or in blank and whether such indorsement purports to restrict or exclude further negotiation or not. Section 52 affords possibility for holding as was done by the Bombay High Court under the corresponding Section 50 of the British India Negotiable Instruments Act that a bearer bill can legally be changed into an order bill. This makes it incumbent on banks to examine all indorsements upon bearer cheques and thus considerably increases their work and responsibility without any compensating advantage to their constituents or the general public.

7. Doubt has been expressed whether the law as it stands affords protection to a banker against forged or unauthorised endorsements or demand draft drawn by one branch of a bank upon another branch of the same bank. Clause 10 is intended to put the matter beyond all doubt.

8. The law at present affords no protection to a banker who credits a customer's account with the amount of a cheque before its realisation as he cannot then be regarded as having received payment for a customer. It is proposed by Clause 12 to extend the protection to collecting bankers in cases where they credit their customer's account with the amount of a cheque before receiving payment of it.

Annexure X.

R. O. C. No. 374 of 38/Legis.

The following Bill, together with the Statement of Objects and Reasons, is published as ordered by the Dewan under Rule 31 of the Travancore Legislative Rules.

(By order)

M. K. NILAKANTA AIYAR,
Ag. Chief Secretary to Government.

Huzur Cutcherry,
Trivandrum, 12th December 1938.

THE TRAVANCORE REVENUE SUMMONS ACT AMENDMENT BILL.

AN ACT TO AMEND THE TRAVANCORE REVENUE SUMMONS ACT (V OF 1063) AS AMENDED BY ACTS V OF 1099 AND IV OF 1105 FOR A CERTAIN PURPOSE.

Preamble.

Where as it is expedient to amend the Revenue Summons Act (Act V of 1063) as amended by Act V of 1099 and IV of 1105 for a certain purpose; it is hereby enacted as follows:—

Short title and commencement.

1. (i) This Act may be called the Travancore Revenue Summons (Amendment) Act 111 —

(ii) It shall come into force at once.

Amendment of Section 4 of Act V of 1063.

2. In the second sentence in Section 4 of the Revenue Summons Act (Act V of 1063) as amended by Act V of 1099 and IV of 1105 for the words "If the person summoned cannot be found", the following words shall be substituted, namely:—

"If such persons refuse to acknowledge service of the summons as aforesaid, or if the person summoned cannot be found".

STATEMENT OF OBJECTS AND REASONS.

Section 4 of the Revenue Summons Act dealing with service of summons provides a case for affixture of a copy of the summons on the outer door of the house *only* in cases where the person summoned cannot be found. The section is silent as to the procedure to be followed in a case of refusal to acknowledge service of summons. This appears to be an omission. The point has been actually raised in certain appeal cases. The amendment proposed is to rectify the omission.

S. KRISHNA PILLAI,
Legal Remembrancer.

THE TRAVANCORE AGRICULTURISTS' RELIEF (AMENDMENT) BILL.

A BILL TO AMEND THE TRAVANCORE AGRICULTURISTS' RELIEF ACT, (ACT III OF 1112).

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II. Substitution of a new Sub-Section for Section 2, Sub-Section (d).

III. Addition of a Sub-Section in Section 2.

IV. Substitution of a new Section for Section 19.

S. 19. Power of court to disallow costs if the certificate of a Debt Conciliation Board is not accepted.

V. Substitution of new heading for Part III.

VI. Substitution of new Section for Section 33.

S. 33A. Debts payable by agriculturists to be scaled down.

S. 33B. Provision for debts incurred before 1st Chingom 1105.

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S. 33D. Provision as to costs etc., in certain cases.

VII. Substitution of a new Section for Section 34.

S. 34. Rate of interest payable by agriculturists on debts scaled down.

VIII. Substitution of a new Section for Section 35.

S. 35. Rate of interest payable by agriculturists on new loans.

IX. Substitution of new Sections for Section 36.

S. 36 A. Recovery of debts in instalments.

S. 36 B. Provision as to costs in certain cases.

S. 36 C. Amendment of certain decrees.

S. 36 D. Stay of execution proceedings.

S. 36 E. Adjudications in insolvency.

S. 36 F. Special provision in the case of certain sales of movable property.

S. 36 G. Sales of immovable property to be set aside in certain cases.

S. 36 H. Consequential provision on setting aside of sale.

S. 36 J. Alienations by agriculturist debtors.

S. 36 K. Nature of the orders passed by the execution Court.

X. Amendment of Section 38.

THE TRAVANCORE AGRICULTURISTS' RELIEF (ACT) AMENDMENT BILL.

A BILL TO AMEND THE TRAVANCORE AGRICULTURISTS' RELIEF ACT, (ACT III OF 1112).

Preamble.

Whereas it is expedient to amend the Travancore Agriculturists' Relief Act of 1112, Act III of 1112, for the purposes hereinafter appearing; It is hereby enacted as follows. --

Short title and commencement.

I. (*a*) This Act may be called "The Travancore Agriculturists' Relief (Amendment) Act, 1114."

(*b*) It shall come into force at once.

Substitution of a new Sub-section for section 2, sub-section (d)

II. For Sub-section (*d*) of Section 2 of the Travancore Agriculturists' Relief Act, Act III of 1112, hereinafter referred to as the said Act, the following shall be substituted, namely ;—

"(*d*) creditor' includes his heirs, legal representtives and assigns"

Addition of a Sub-section in Section 2.

III. In Section 2 of the said Act the following shall be added after Sub-Section (*g*), namely ;—

"(*h*) The Amendment Act means the Travancore Agriculturists' Relief (Amendment) Act, 1114."

Substitution of a new section for section 19.

IV. For Section 19 of the said Act the following shall be substituted, namely :—

Power to disallow costs if certificate not accepted

"19. If, in respect of any debt covered by the certificate of the Board, the creditor institutes a suit or makes an application (not being an application under Section (18) in any civil court, such court, having regard to the certificate and the conduct of the parties in connection therewith, may, in its discretion, disallow in whole or in part the costs of the suit or of the application, as the case may be,

Explanation —Nothing in this Section shall be deemed to affect in any manner the powers vested in the court under Part III of the Amendment Act."

Substitution of new heading for Part III

V. For the heading of Part III of the said Act, the following shall be substituted, namely :—

Part III. Provisions regarding Scaling down of debts, future rate of interest and recovery of debts in instalments."

VI. For Section 33 of the said Act the following shall be substituted, namely ;—

Substitution of new Section for Section 33.

"33A. Notwithstanding any law, custom, contract or decree of court to the contrary, all debts payable by an agriculturist at the commencement of the Amendment Act, shall be scaled down in accordance with the provisions this Part.

Debts payable by agriculturists to be scaled down.

No sum in excess of the amount as so scaled down shall be recoverable from him or from any land or interest in land belonging to him: nor shall his property be liable to be attached and sold or proceeded against in any manner in the execution of any decree against him in so far as such decree is for an amount in excess of the sum as scaled down under this Part.

33B. Debts incurred before the 1st Chingom 1105 shall be scaled down in the manner mentioned hereunder, namely :—

(1) All interest outstanding on the 1st Chingom 1114, in favour of any creditor of an agriculturist whether the same be payable under law, custom or contract or under a decree of court and whether the debt or other obligation has ripened into a decree or not, shal be deemed to be discharged, and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agriculturist on that date.

Provision for debts incurred before 1st Chingom 1105.

(2) Where an agriculturist has paid to any creditor twice the amouut of the principal whether by way of principal or interest or both, such debt including the principal, shall be deemed to be wholly discharged.

(3) Where the sums repaid by way of principal or interest or both fall short of twice the amount of the principal, such amount only as would make up this shortage or the principal amount or such portion of the principal amount as is outstanding, whichever is smaller, shall be repayable.

(4) Subject to the provisions of Sections 36 F to 36 J nothing contained in Sub-Sections (1), (2) and (3) shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of a debtor to pay any sum in excess of the amount which would have been payable by him if the Amendment Act had not been passed,

Explanation: -Where a bebt has been renewed or included in a fresh document in favour of the same creditor, the principal originally advanced by the creditor together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable by the agriculturist under this section.

Provision for debts incurred on or after 1st Chingom 1104.

33 C. Debts incurred on or after the 1st Chingom 1105 shall be scaled down in the manner mentioned hereunder, namely —

(1) Interest shall be calculated up to the commencement of the Amendment Act at the rate applicable to the debt under the law, custom, contract or decree of court under which it arises or at four percent, per annum, whichever is less, and credit shall be given for all sums paid towards interest, and only such amount as is found outstanding, if any, for interest thus calculated shall be deemed payable together with the principal amount or such portion of it as is due: Provided that any part of the debt which is found to be a renewal of a prior debt shall be deemed to be a debt contracted on the date on which such prior debt was incurred, and if such debt had been contracted prior to the 1st Chingom 1105, shall be dealt with under the provisions of Section 33 B.

(2) Subject to the provisions of sections 36 F to 36 J nothing herein contained shall be deemed to require the creditor to refund any sum which has been paid to him or to increase the liability of the debtor to pay any sum in excess of the amount which would have been payable by him if the Amendment Act had not been passed.

Provision as to costs etc., in certain cases.

33 D. Where a debt payable by an agriculturist includes any sum decreed as costs by any court, or sums lawfully expended by a mortgagee or other person in order to preserve the property mortgaged, such sum or sums shall be recoverable in addition to the sum recoverable under the provisions of Sections 33 B and 33 C."

Substitution of a new section for Section 34.

VII. For Section 34 of the said Act the following shall be substituted, namely:—

Rate of interest papable by agriculturist on debtss oaled down.

"34. All debts which have been scaled down under the provisions of the Amendment Act shall, so far as any sum remains payable thereunder, carry from the date up to which they have been scaled down interest on the principal amount due on that date at the rate previously applicable under law, custom, contract or otherwise;

Provided that it shall not in any case exceed four per cent. per annum in the case of money debts and six per cent. per annum in the case of debts due in paddy or grain".

VIII For Section 35 of the said Act the following shall be substituted namely :—

Substitution of a new section for Section 35.

"35. In any proceeding for recovery of a debt the court shall scale down all interest due on any debt incurred by an agriculturist after the commencement of the Amendment Act, so as not to exceed a sum calculated at six per cent. per annum if the debt be a secured debt and nine per cent. per annum if the debt be an unsecured debt".

Rate of interest payable by agriculturists on new loans.

IX For section 36 of the said Act the following shall be substituted namely:—

Substitution of new section for Section 36.

"36 A (1) Notwithstanding anything in any law, contract, decree, or order of court, for a period of five years from the date of the commencement of the Amendment Act a court executing a decree, not being a decree declared as such under Section 16, shall order, that any money recoverable under the decree from an agriculturist be recovered in thirty instalments spread over fifteen years:

Recovery of debts in instalments.

Provided that it shall be lawful for the court, for special reasons to be recorded in writing, to reduce the number of instalments and the period.

(2) No court shall order under sub-section (1) that any money recoverable under a decree be recovered in instalments unless the debtor's entire properties, if any, (except such property which by or under any law for the time being in force is exempt from attachment and sale in execution of the decree) are placed under attachment, or if the debtor so elects, the debtor gives all his properties as security or gives adequate security to the satisfaction of the court for the realisation of the entire money recoverable under the decree.

(3) Whenever any debtor makes default in payment of the amount of any instalment fixed under sub-section (1) the court shall, except for reasons to be recorded in writing, order the recovery of the amount of such instalments alone as have been defaulted, together with the interest, if any, thereon. But if three instalments have been defaulted consecutively, the court shall, except for reasons to be recorded in writing, order that the entire amount remaining recoverable under the decree together with interest, if any, thereon shall be recovered in a lump sum.

(4) Nothing in this Section shall apply to any decree passed for the recovery of any debt incurred after the commencement of the Amendment Act.

36 B. (1) Where a decree is passed against an agriculturist in a suit filed on or after the 1st Chingom 1114, the court shall allow only such costs as would have been allowable if the suit had been filed for the amount of the debt as scaled down in accordance with the provisions of the Amendment Act, and when in any such case a decree has been passed before the commencement of the Amendment Act, the court shall, on application by the agriculturist amend the decree accordingly.

Provision as to costs in certain cases.

(2) Nothing in sub-section (1) shall apply to any suit instituted on or after the 1st Chingom 1114 and before the commencement of the Amendment Act in respect of a claim which would be barred by limitation before the 1st Medom 1114.

36 C. Where before the commencement of the Amendment Act a court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or on the application of the decree-holder, apply the provisions of the Amendment Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1100, amend the decree accordingly or enter satisfaction, as the case may be: Provided that all payments made or amounts recovered, whether before or after the commencement of the Amendment Act in respect of any such decree shall first be applied in payment of all costs as originally decreed to the creditor.

Amendment of certain decrees.

36 D. Every court executing a decree passed against a person entitled to the benefits of the Amendment Act sahll, on application, stay the proceedings until the court which passed the decree has passed orders on an application made or to be made under Section 36 C:

Stay of execution proceedings.

Provided that where within 60 days after the application for stay has been granted the judgment-debtor does not apply to the court which passed the decree for relief under Section 36 C or where an application has been so made and is rejected, the decree shall be executed as it stands, notwithstanding anything contained in the Amendment Act to the contrary.

Explanation — The expression "the court which passed the decree" shall have the same meaning as in the Code of Civil Procedure, 1100.

36 E. Nothing contained in the Amendment Act shall apply to the debts payable by any person who has been adjudicated an insolvent, if prior to the coming into force of the Amendment Act a dividend has been declared out of his assets. If a dividend has not been so declared the Amendment Act shall apply to the debts payable by such

Adjudications in insolvency.

person if he would have been an agriculturist within the meaning of the Travancore Agriculturists' Relief Act but for his adjudication in insolvency.

Special provision in the case of certain sales of movable property.

36 F. Where, in execution of any decree, any movable property of an agriculturist has been sold on or after the 1st Chingam 1114, any judgment-debtor may apply to the court for an order that the provisions of Sections 33 B or 33C, as the case may be, and of Sections 33 D and 34 be applied to the decree, and the court shall if satisfied that the applicant is an agriculturist entitled to the benefits of those sections apply the same and order the decree-holder to refund any sum received by him on or after the 1st Chingom 1114 in excess of the amount to which he would have been entitled if the property had not been sold:

Provided that no such order shall be made without notice to the decree-holder and without affording him an opportunity to be heard in the matter.

Sales of immovable property to be set aside in certain cases.

36 G. Where in execution of any decree any immovable property in which an agriculturist had an interest, has been sold or foreclosed on or after the 1st Chingom 1114 or where such property has been sold before the 1st Chingom 1114 but the sale has not become absolute under Order 21 Rule 89 (1) of the Code of Civil Procedure 1100 on the 1st Chingom 1114, then, notwithstanding anything contained in the Travancore Limitation Act 1100 or in the Code of Civil Procedure, 1100, and notwithstanding that the sale has been confirmed on or after the 1st Chingom 1114, any judgment debtor, claiming to be an agriculturist entitled to the benefits of the Travancore Agriculturists' Relief Act may apply to the court within 90 days of the commencement of the Amendment Act to set aside the sale or foreclosure of the property, and the court shall, if satisfied that the applicant is an agriculturist entitled to those benefits, order the sale or foreclosure to be set aside, and thereupon the sale shall be deemed not to have taken place at all:

Provided that no such order shall be made without notice to the decree-holder, the auction-purchaser and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter.

Consequential provision on setting aside of sale.

36 H. When a sale is set aside under the preceding Section, a purchaser shall be entitled to an order for repayment of any purchase money paid by him against the person to whom it has been paid and the order may be enforced in execution:

Provided that no commission shall be payable in respect of sales held on or after the 1st Chingom 1114 and provided further that where commission has been collected by the court in the case of such sales the court shall direct the same to be refunded.

36 J. All alienations of immovable property made by an agriculturist debtor on or after the 1st Chingom 1114 shall be invalid as against every creditor whose sale in execution or foreclosure decree has been set aside under Section 36 G or who became entitled to rateable distribution of the proceeds of such sale under Section 59 of the Code of Civil Procedure, 1100.

Alienations by debtors

36 K. Orders under this Part passed by the court executing a decree shall be deemed to be orders under Section 40 of the Code of Civil Procedure, 1100 and shall be appealable as such".

Nature of the orders passed by the execution court.

X. In Section 38 of the said Act for the words "three years from such date" the words "five years from the date of the commencement of the Amendment Act" shall be substituted.

Amendment of Section 38.

Statement of Objects and Reasons.

The Travancore Agriculturists' Relief Act, which was intended to afford relief to the agriculturist debtors in the State has failed to render any substantial help to them. Their position is as bad as it was when that Act was passed. The Act has not enabled them to pay off their debts to any appreciable extent nor has it created in them a hope of recovering from the burden of indebtedness. The provisions of the Act relating to voluntary conciliation have proved to be of little use for solving the problem of agricultural indebtedness. It has therefore become abundantly clear that unless the Act is so amended as to enable the debts being scaled down to an extent consistent with the present price of land and of agricultural produce, there can be no hope of improving the condition of the agriculturist debtors in the State. This Amendment Bill is primarily intended to scale down the debts of the agriculturists on the lines of the Madras Agriculturists' Relief Act, 1938. In the case of debts incurred before the 1st Chingom 1105 only the principal amount or such portion of it as may be outstanding need be paid. [*See* Clause 33 B (1)]. Where twice the amount of the principal has been paid whether by way of principal or interest such debt will be deemed to be wholly discharged [*See* Clause 33 B (2)]. Where the sums repaid fall short of twice the amount of the principal such amount only as would make up this shortage, or the principal amount or such portion of it as is outstanding, whichever is smaller, shall be repayable [*See* Clause 33 B (3)].

In the case of debts incurred on or after the 1st Chingom 1105 interest will be calculated up to the date on which the Amendment Bill comes into force at a maximum rate of 4 per cent. per annum [*See* Clause 33 C (1)]. It has to be noted that in the Madras Act the maximum rate of interest fixed for such debts is 5 per cent. per annum. Considering the rate of interest that was prevailing in the Madras Presidency and the rate that was prevailing in Travancore and also taking into account the fact that there has been a greater fall in

the prices of agricultural products in Travancore than in the Madras Presidency, a lower rate of interest is fixed in the Bill. Any part of the debt which is found to be a renewal of a prior debt will be deemed to be a debt contracted on the date on which such prior debt was incurred (*See* Clauses 33 B and 33 C). Subject to certain exceptions a creditor is not, however, required to refund any sum which has been paid to him (See Clauses 33 B and 33 C). Sums decreed as costs by any court or sums lawfully expended for preserving a mortgaged property will not be scaled down(*See* Clause 33 D.) Debts allowed to be scaled down under the Amendment Bill will carry future interest at a maximum rate of 4 per cent. per annum in the case of money debts and 6 per cent. per annum in the case of debts due in paddy or grain (*See* Clause 34). The Madras Act fixes 6¼ per cent without making any distinction between money debts and debts due in paddy or grain. In the case of debts incurred after the Amendment Bill comes into force the maximim rate of interest allowed will be six per cent. per annum for secured debts and nine per cent. per annum for unsecured debts as in the case of the existing Act (*See* Clause 35). In the Madras Act the rate fixed is 6¼ per cent per annum in the case of all debts, although Government is given the power to vary the rate of interest.

With regard to the recovery of debts in instalments the existing Act permits the courts, subject to certain restrictions, to order the recovery of decree-debts in not more than twenty-four instalments spread over a period not exceeding twelve years. The Amendment Bill requires the courts, subject to certain conditions, to grant thirty instalments spread over fifteen years with the proviso that it shall be lawful for the court, for special reasons to be recorded in writing, to reduce the number of instalments and the period (*See* Clause 36 A).

Provision is made in the Bill for amending decrees passed before the Bill comes into force so as to make the provisions of the Bill applicable to such decrees (*See* Clause 36 C). For this purpose execution of decrees will have to be stayed subject to certain restrictions. (*See* Clause 36 D). Provision is also made relating to the awarding of costs in suits filed on or after the 1st Chingom 1114 for the purpose of discouraging the filing of suits against agriculturists before the Bill comes into force (*See* Clause 36 B). The provisions of the Bill are made applicable to the debts of an agriculturist adjudicated insolvent before the Bill comes into force provided a dividend has not been declared out of his assets (*See* Clause 36 E). It is also provided for setting aside the sales of movable properties of an agriculturist held on or after the 1st Chingom 1114 and for making the provisions of the Bill applicable to the decrees. (*See* Clause 36 F) In the case of sales of immovable proparties held on or after the 1st Chingom 1114, and of sales held before that date but not confirmed on that date, it is provided for setting aside such sales and for making the provisions of the Bill applicable to the decrees (*See* Clause 36G). All alienations of immovable property made by an agriculturist debtor on or after the 1st

Chingom 1114 are declared invalid as against a creditor whose sale has been set aside under Clause 36 G or who became entitled to rateable distribution of the proceeds of such sale (*See* Clause 36 J). Doubts have been entertained on the question as to whether orders passed by the executing court relating to instalment payments under the Agriculturists Relief Act are appealable. It is provided that orders passed in execution under the provisions of the Bill will be deemed to be orders under Section 40 of the Code of Civil Procedure and appealable as such. The period limit fixed for the operation of Sections 34, 35 and 36 of the existing Act relating to future interest is taken away, as it is thought unnecessary to limit the operation of the provisions of those Sections to any particular period. The period fixed in Section 33 of the existing Act relating to instalment payment and in Section 38 relating to transactions purporting to be mortgages and leases but which are really hypothecations, is extended to five years from the date on which this Bill comes into force.

13th Thulam 1114. JOSEPH VITHAYATHIL.

NOTICE.

The following Bill, leave to introduce which has been granted by the Sri Mulam Assembly is published for general information.

Office of the Secretary to the
Sri Mulam Assembly,
Trivandrum, 9th August 1935.

K. MADHAVA KURUP,
Secretary to the Sri Mulam Assemaly.

THE TRAVANCORE SPECIAL MARRIAGE AND SUCCESSION BILL.

Whereas it is expedient to provide a form of marriage for persons who cannot otherwise validly contract a marriage and whose marriage would otherwise be invalid and to provide a law of intestate succession for them: It is hereby enacted as follows—

1. This Act may be called the Travancore Special Marriage and Succession Act of 1110 and it shall come into force on the day of

2. It shall apply to all persons domiciled in Travancore and to such persons not so domiciled as have or shall have marital relation in the form prescribed under this Act with persons domiciled in Travancore.

PART I.

MARRIAGE AND ITS DISSOLUTION.

3. Marriage may be celebrated under this Act between persons neither of whom professes the Hindu, Christian, Budhist, Jain, Jewish or the Mahammadan religion or between persons each of whom professes either the Hind, Christian, Buddhist, Jain, Jewish or the Mahammadan religion upon the following conditions:—

(1) Neither party must at the time of the marriage have a husband or wife living

(2) The man must have completed his age of twenty-five years and the woman her age of eighteen years.

(3) Each party must, if he or she has not completed the age of eighteen years have obtained the consent of his or her father or guardian to the marriage.

(4) The parties must not be related to each other in any degree of consanguinity or affinity which would according to any law or custom to which either of them is subject, render a marriage between them illegal.

4. The Government may appoint one or more Registrars under this Act either by name or as holding any office for the time being for any District or Taluq. The officer so appointed shall be called "Registrar of marriages under Act of" and is hereinafter referred to as "the Registrar".

5. When a marriage is intended to be solemnised under this Act one of the parties must give notice in writing to the Registrar before whom it is to be solemnised.

The Registrar to whom such notice is given must be the Registrar of a District or taluk within which one at least of the parties to the marriage has resided for a month before such notice is given. Such notice may be in the form given in the first schedule to this Act.

6. The Registrar shall file all such notices and keep them with the records of this office and shall also forthwith enter a true copy of every such notice in a book to be kept for that purpose furnished to him by the Government, to be called "Marriage Notice" Book under Act of ", and such book shall be open at all reasonable times, without fee to all persons disirous of inspecting the same.

7. One month after notice of an intended marriage has been given under Section 5, such marriage may be solemnised unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of Section 3.

The nature of the objection shall be recorded in writing by the Registrar in the Register, and shall if necessary be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

8. On receipt of such notice of objection, the Registrar shall not proceed to solemnise the marriage until the person making the objection has reasonable time, not exceeding three months from the date of objection, to get an order of a civil court staying the solamnisation of the marriage or a decree declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of Section 3.

9. If no such order staying the solemnisation of the marriage is granted or if the decision of the court is that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of Section 3, such marriage may be solemnised.

If the decision of such court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of Section 3, the marriage shall not be solemnised.

10. Any court in which any such suit as is referred to in Section 8 is filed, may if it shall appear to it that the objection was not reasonable and bonafide, inflict a fine, not exceeding one thousand Rupees on the person objecting, and award it or any part of it, to the parties to the intended marriage.

11. Before the marriage is solemnised the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of eighteen, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and in every case, it shall be countersigned by the Registrar.

12. The marriage shall be solemnised in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnised in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses. "I (A) take the (B) to be my lawful wife (or husband)."

13. The marriage may be celebrated either at the office of the Registrar or at such other place within the Jurisdiction of the Registrar as the parties desire; provided that the Government may prescribe the conditions under which such marriages may be solemnised at places other than the Registrar's office and the additional fees to be paid thereupon.

14. When the marriage has been solemnised, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the Marriage Certificate Book under Act of"—in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

15. The Government shall prescribe the fees payable to the Registrar for the duties to be discharged by him under this Act.

16. The Marriage Certificate Book referred to in Section 14 shall at all reasonables, times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom, shall on application be given by the Registrar on payment of the fees to be prescribed by the Government.

17. Every person who, being at the time married, procures a marriage of himself to be solemnised under this Act shall be deemed to have committed an offence under Section 497 or Section 498 of the Travancore Penal Code, as the case may be, and the marriage so solemnised is void.

18. Every person married under this Act who during the lifetime of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided for in Sections 467 and 468 of the Travancore Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

19. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true shall be deemed guilty of the offence described in Section 163 of the Travancore Penal Code.

20. Nothing contained in this Act shall affect the validity of any marriage not solemnised under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but, if the validity of any such mode shall hereafter come into question before any court, such question shall be decided as if this Act had not been passed.

21. Marriage is dissolved only in one of the following ways:
(i) by the death of either party;
(ii) by mutual consent evidenced by a registered instrument, or
(iii) by a formal order of dissolution as hereinafter provided.

22. A husband or wife may present a petition for dissolution of the marriage under Section 21, clause (iii) in the court of the District Judge within the local limits of whose jurisdiction the respondent resides, carries on business or personally works for gain or if the respondent resides, carries on business or personally works for gain in any place outside Travancore, in the court of the District Judge within whose jurisdiction the petitioner resides, and the petitioner shall, in all cases, offer in the petition reasonable compensation to the respondent.

23. What is reasonable compensation shall, in case of dispute be determined by the court after an enquiry into the position, means and circumstances of the parties, but without going into the grounds of the proposed dissolution, and it shall, in no case, exceed five thousand Rupees.

24. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

25. Six months after the service of the copy as aforesaid, if the petition is not withdrawn in the mean time, the court shall declare in writing the marriage dissolved and determine the amount of compensation. The dissolution shall take effect from the date of the order declaring it.

So far as it decrees payment of compensation, such order shall be executable and appealable as a decree under the Code of Civil Procedure, on payment of court fees on the amount adjudged or claimed, as the case may be.

PART II.

Intestate Succession

26. The marriage under this Act of any member of an undivided family shall be deemed to effect his severance from such family.

27. A person who marries under this Act shall not by reason of such marriage, incur forfeiture of rights or property, nor shall it be held in any way to impair or affect any right of inheritance by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived of caste, notwithstanding any law or usage now in force.

Provided that nothing in this section shall confer on any person any right to any religious office or service or to the management of any religious or charitable trust.

28. No person shall, by marriage, acquire any interest in the propety of the person whom he or she marries or becomes incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

Provided that the wife and minor children shall be entitled to be maintained by the husband or father as the case may be and that the expenses for maintenance shall always be a charge on the husband's property.

29. Succession to the property of any person who marries under this Act, and to the property of the issue of such marriage, shall be regulated by the provisions hereinafter contained.

30. For the purpose of succession there is no distinction:—

(*a*) between those who are related to a person deceased through his father, and those who are related to him through his mother; or

(*b*) between those who are related to a person deceased by the full blood, and those who are related to him by the half-blood; or

(*c*) between those who were actually born in the lifetime of a person deceased and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive: or

(*d*) between self-acquired propeity and ancestral property, or between the property of a male and that of a female.

31. The property of an intestate devolves upon his wife or husband or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained.

Explanation:—Kindred or consanguinity is the connection or relation of persons descended from the same stock or common ancestor.

32. Where the intestate has left a widow and also children or the lineal descendants of deceased children or both, they shall take the whole of his property. In the absence of the widow, the children and the lineal descendants of deceased children shall take the whole, and in the absence of the widow and the children, the lineal descendants of deceased children shall take the whole.

33. The distribution of the estate under Section 32 shall be according to the following rules,—

(i) The widow shall be entitled to a share equal to that of a son or daughter.

(ii) Sons and daughters shall take the propery in equal shares:

Provided that if a son or daughter shall have predeceased the intestate, the lineal descendants of such child shall take the share which such child would have taken had it survived the intestate,

(iii) Grand children shall take in equal shares what their father or mother would have taken had he or she survive the intestate.

In like manner, the property shall go to the surviving lineal descendants of the intestate, where they are all in the degree of great grand children to him or in a more remote degree.

34. Where the intestate has left a widow and also persons who are of kindred to him, but has left no lineal descendants, one-half of his property shall belong to his widow and the other half shall go to those who are of kindred to him in the order and according to the rules hereinafter contained.

35. Where the intestate has left no lineal descendant and has left none who are of kindred to him, the whole of his property shall belong to his widow.

36. Where the intestate has left no widow and no lineal descendants, the whole of his property shall go to those who are of kindred to him in the order and according to the rules hereinafter contained, and if he has left none who are of kindred to him, it shall go to the Sirkar.

37. A husband surviving the wife has the same rights in respect of her property, if she dies intestate, as a widow has in respect of her husband's property, if he dies intestate.

38. Where the intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) shall be those contained in section 39 to 41.

39. Where the intestate's father and mother are living, they shall succeed to the property in equal shares.

In the absence of the father, the mother shall succeed to the property, and in the absence of the mother, the father shall succeed to the property.

40. Where the intestate has left neither lineal descendant, nor father, nor mother the property shall be divided equally between his brothers and sisters and the child or children of such of them as may have died before him, such children (if more than one) taking in equal shares only the shares which their respective parents would have taken if living at the testators' death.

41. Where the intestate has left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindered to him.

42. Where a distributive share in the property of a person who has died intestate is claimed by a child or any descendant of a child of such person, no money or other property which the intestate may, during his life have paid, given or setteld to, or for the advancement of, the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

CI

FIRST SCHEDULE.

(*See Section 5*)

Notice of Marriage.

To , a Registrar of Marriages under Act — of — for the District.

I hereby give you notice that a marriage under Act — of — is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):—

Names.	Condition.	Rank or Profession.	Age.	Dwelling place.	Length of residence
A. B.	*Unmarried* *Widower*	*Landowner.*	*Of full age*	......	*23 days*
C. D.	*Spinster.*	... ...	*Minor.*	......	......

Witness my hand, this day of

II (*Signed*) *A. B.*

SECOND SCHEDULE.

(*See Section* 11.)

Declaration to be made by the Bridegroom.

I, *A B*, hereby declare as follows:—

1. I am at the present time unmarried.

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Buddhist, or Jaina religion: *or (as the case may be)* I profess the Hindu, or the Buddhist or the Jaina religion.

3. I have completed my age of twenty-five years;

4. I am not related to *C. D.* (*the bride*) in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said *C. D* is subject, and subject to the provisos of clause (4) of Section 3 of Act of render a marriage between us illegal:

(*And when the bridegroom has not completed his age of eighteen* years.)

5. The consent of my father (*or* guardian, *as the case may be*) has been given to a marriage between myself and *C. D*, and has not been revoked.

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(*Signed*) *A B* (*the bridegroom.*)

Declaration to be made by the Bride.

I, *C D*, hereby declare as follows :—

1. I am at the present time unmarried ;

2. I do not profess the Christian, Jewish, Hindu, Muhammadan, Budhist or Jaina religion *or* (*as the case may be*) I profess the Hindu, or Buddhist or the Jaina religion,

3. I have completed my age of eighteen years :

4. I am not related to *A B* (*the bridegroom*) in any degree of consangunity or affinity which would, according to the law to which I am subject or to which the said *A B* is subject and subject to the provisos of clause (4) of Section 3 of Act—of—render a marriage between us illegal :

(*And when the bride has not completed her age of eighteen years unless she is a widow.*)

5. The consent of *M N*, my father (*or guardian as the case may be*) has been given to a marriage between myself and *A B* and has not been revoked :

6. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment and also to fine.

(*Signed*) *C D* (*the bride.*)

Signed in our presence by the above named *A B* and *C D*

G H
I J (*three witnesses.*)
K L

(*And when the bridegroom or bride has not completed the age of eighteen years except in the case of a widow.*)

Signed in my presence and with my consent by the above-named *A B* and *C D*.

M N the father (or guardian) of the above named (*A B or C D*) *as the case may be*)

Countersigned E. F.
Registrar of Marriages under Act—of for the District of

Dated the Day of 11

THIRD SCHEDULE.

(*See Section* 11.)

Registrar's Certificate.

I, *E F*, certify that, on the of appeared before me *A B* and *C D*, each of whom in my presence and in the presence of three credible witnesses whose names are signed here under, made the declarations required by Act of and that a marriage under the said Act was solemnised between them in my presence.

(*Signed*) *E F.*,
Registrar of marriages under Act of for the District of
(*Signed*) *A B*.
C D,

G H
I J (*three witnesses.*)
K L

Dated the day of 11 .

STATEMENT OF OBJECTS AND REASONS,

There is no law in Travancore which validates marriages between persons who belong to different communities or castes. In India the Special Marriage Act made provision so long ago as 1872 for validating marriage between persons who do not profess the Christian, the Jewish, the Hindu, the Mahammadan, the Parsi, the Buddhist, the Sikh or the Jaina religion. In 1921, a bill to amend this Act by extending its provisions to the case of those who professed the Hindu, the Buddhist, the Sikh or the Jaina religion was introduced in the Legislative Assembly, and it became law as Act XXX of 1923. Subsequently in 1928 an attempt was made by Dr. Gour to further amend the Act by extending its provisions to all classes of people. The bill which he moved for introduction in the Assembly was sent for circulation and there the matter dropped.

The reasons which led the Legislature in passing a measure of this kind in British India apply with far greater force in Travancore. Education has made rapid progress in this State and has premeated all cases of people. Recent social legislation has destroyed the joint family system and has established individual rights of property. It is therefore natural to expect greater individual freedom in the case of people whose freedom till now was considerably curtailed by social customs, traditions and the laws of inheritance. Great harm is likely to ensue if law did not keep pace with the advancing needs and circumstances of society. The absence of a law of marriage which will validate the union of persons belonging to different castes and communities instead of preventing such unions can only bastardise their issue and leave

them unprotected. The measure proposed is after all only permissive and is intended for the protection of those who wish to take advantage of its provisions and who indeed stand in need of its protection. In fact the demand has already come from the public as is evident from the resolutions passed at several important recent social conferences. A bill of this kind has also been introduced in the neighbouring State of Cochin These are some of the considerations which have induced me to frame a bill on the lines of the Special Marriage Act in British India.

The introduction of a Special Marriage law validating marriages between persons who are bound by different rules of inheritances necessitates the enactment of a special law of succession for them In the absence of such a law of inheritance it will obviously be impossible to determine the devolution of their property. In British India this difficulty is got over by the application of the rules of the Indian Succession Act to such people. We have no such general law of succession in Travancore. It is therefore necessary to make special provision for intestate succession in regard to those who contract marriages under this act The bill is accordingly divided into two parts part I dealing with marriage and its dissolution, and part II with intestate succession.

I shall now deal with the special features of the different provisions in this Bill.

PART 1

MARRIAGE AND ITS DISSOLUTION.

Clauses 3 to 20 contain provisions relating to marriage and clauses 21 to 25 deal with dissolution of marriage. The clauses relating to marriage are adapted from the Indian Special Marriage Act. Except for the few alterations noted below clauses 3 to 20 are word for word the same as sections 2 to 19 of the Special Marriage Act. The changes made are,—(1) In the Special Marriage Act, the age prescribed is 18 for the man and 14 for the woman while the Bill prescribes 25 and 18 respectively. (2) While in the Special Marriage Act, the guardian's consent is required if the party has not completed the age of 21 years, the Bill requires the guardian's consent if the party has not completed 18 years. (3) The provisos in the Act regarding consanguinity have been dropped as unnecessary. (4) The date of solemnisation of the marriage is postponed to one month after notice in the Bill instead of 14 days as laid down in the Act, and some alterations have also been made in the Bill with regard to the procedure on receipt of objection by the Registrar of Marriages.

The Special Marriage Act provides that the Indian Divorce Act shall apply to all marriages contracted under the Act. We have no such law of divorce here. There is wide spread dissatisfaction with regard to the existing state of the divorce law throughout the civilised world, and legal reform tends to the removal of the restrictions on divorce. It is thought desirable therefore to adopt the simple procedure prescribed in the Nayar Act 1 of 1088 and in the Ezhava-Act. Clauses 21 to 25 have been reproduced from those Acts.

PART 11.

INTESTATE SUCCESSION.

Clause 26 makes provisions for the separation of a member of a joint family who marries under this Act. This provision is obviously necessary in the interests of all the members of the joint family and it finds a place also in the Special Marriage Act section 22. Clause 7 contains an important provision and is intended to protect the rights of persons who marry under this Act. In British India the Caste Disabilities Removal Act XXI of 1850 protects the rights of persons who happen to lose their caste or to change their religion, and section 23 of the Special Marriage Act extends this protection to persons who marry under the Act. There is special need for this provision in Travancore as under the law of this State a person loses his rights by conversion and loss of caste. The proviso makes an exception in the case of religious offices and trusts.

The tendency of modern legislation is to give women complete freedom to hold property and the bill accordingly makes no distinction either in the matter of succession or in regard to separate and independent title to property between males and males. It is desirable however to make the expenses of maintenance for the wife and minor children a charge on the husbands property and such a provision is therefore made in clause 28. This clause lays down the generel rule that, no person shall by reason of marriage acquire any right in the property of the person whom he or she marries.

This scheme of succession chalked out in the Bill is different from what is contained in the Indian Succession Act or in the Christian Succession Act here which in several aspects follows the Indian Succession Act. The widow and the children in the first place succeed to the intestate's property and they share equally. There is also no distinction between sons and daughters. Clause 33 provides for the distribution of the estate among the widow and the lineal descendants of the intestate. In the absence of lineal descendants, the widow gets only one half of the estate so long as there are kindred of the intestate. Among the kindred, the father and mother exclude all the others but share equally. After the partents the brothers and sisters of the intestate take the state. Clauses 31 to 41 deal with succession and are sufficiently clear to need any particular comment. It is only necessary to say that care has been taken to follow the provisions contained in the Indian Succession Act as far as possible as that Act has now stood the test of Judicial scrutiny for over half a century.

K. KUNJUKRISHNA PILLAI,
29th Edavom 1110.

THE TRIVANDRUM CITY MUNICIPAL BILL

(As revised by the Joint Committee.)

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THE TRIVANDRUM CITY MUNICIPAL BILL.

(As revised by the Joint Committee.)

[Square brackets indicate portions as revised by the Joint Committee.]

An Act to make provision for the better management of the municipal affairs of the City of Trivandrum.

Preamble.

WHEREAS it is expedient to make provision for the better management of the municipal affairs of the City of Trivandrum; It is hereby enacted as follows:—

PART I.

CHAPTER I—PRELIMINARY.

Title and extent.

1. (1) This Act may be called the Trivandrum City Municipal Act.

(2) Except as hereinafter expressly provided it extends only to the City of Trivandrum.

Repeal.

2. The Travancore Municipal Act, V of 1095, is hereby repealed [to the extent to which it applies to the City of Trivandrum.]

Definitions.

3. In this Act unless there is anything repugnant in the subject or context—

"Appoint."

(1) "Appoint" includes to appoint temporarily or in an officiating capacity.

"Appointment."

(2) "Appointment" includes temporary and officiating appointments.

"Budget grant."

(3) "Budget grant" means any sum entered on the expenditure side of a budget estimate which has been adopted by the Council.

"Building."

(4) "Building" includes a house, out house, stable, latrine, shed, hut, wall (other than a boundary wall not exceeding eight feet in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever.

"Building line."

(5) "Building-line" means a line which is in rear of the street alignment and to which the main wall of a building abutting on a street may lawfully extend [and beyond which no portion of the building may extend except as prescribed in the building rules.]

"Carriage."

(6) "Carriage" means any wheeled vehicle with springs or other appliances acting as springs; and includes any kind of motor car, motor lorry, motor omnibus, motor cycle, bicycle, tricycle and rickshaw.

"Cart"

(7) "Cart" includes any wheeled vehicle which is not a "carriage."

"Casual vacancy" and 'casual election'

(8) "Casual vacancy" means a vacancy occurring otherwise than by efflux of time in the office of a divisional councillor or in any other elective office, and "Casual election" means an election held on the occurrence of a casual vacancy.

"City of Trivandrum."

(9) "City of Trivandrum" or "City" means the area declared by Our Government by notification in Our Government Gazette, to be the City of Trivandrum.

"Company."

(10) "Company" means a company as defined in the Travancore Companies Act 1114, and includes any [Co-operative Society registered or deemed to be registered under any law for the time being in force.]

"Council."

(11) "The Council" means the Council of the Corporation of the City of Trivandrum.

'Cream.'

["(12) 'Cream' means that portion of milk rich in milk fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centifugal force."

"Dairy."

"(13) 'Dairy' includes any farm, milk store, milk shop, or other place from which milk is supplied only on, or for sale or in which milk is kept for the purpose of sale, or manufactured into butter, ghee, cheese, curd or dried or condensed milk, for sale, and in the case of a dairyman who does not occupy any place for the sale of milk, includes the place where he keeps the vessels used by him for the sale of milk, but does not include—

(*a*) a shop from which milk is not supplied otherwise than in properly closed and unopened receptacles in which it was delivered to the shop or

(*b*) a shop or other place in which milk is sold for consumption on the premises only.

"Dairyman",

"(14) 'Dairyman' includes any occupier of a dairy, any cow-keeper who trades in milk or any seller of milk whether wholesale, or by retail."

"Dairy produce."

"(15) 'Dairy produce' includes milk, butter, butter-ghee, curd, butter-milk, cream, cheese and any and every product of milk."

(16) " Dangerous disease " means—

' Dangerous disease.

(*a*) Anthrax, chicken pox, cholera, diphtheria, enteric fever, leprosy, measles, plague, pulmonary tuberculosis, rabies, small-pox and

(*b*) any other disease notified under Section 345.

(17) " Filth " includes sewage, nightsoil, dung, dirt, putrid and putrifying substances and all offensive matter.

"Filth."

"(18) [' Food ' includes every article (other than drugs and water) used by man for food or drink and all materials used or admixed in the composition or preparation of such article and shall also include flavouring or colouring matter, confectionary, spices and condiments."]

"Food."

"(19) " Hut " means any building which is constructed principally of wood, mud, leaves, grass or thatch and includes any temporary structure of whatever size or any small building of whatever material made which the Council may declare to be a hut for the purposes of this Act.

' Hut '

"(20) [' Latrine ' means a place set apart for defecating or urinating or both and includes a closet of the dry or water-carriage type and urinal."]

Latrine. '

"(21) [' Milk ' means the normal clean secretion drawn from the udder of a healthy cow, buffalo, sheep or goat either completely or after the first portion of such secretion has been drawn off to completion and includes cream, skimmed milk, separate milk, and condensed and dessicated milk."]

"Milk."

(22) " The Municipal office " means the principal office of the Corporation.

'Municipality.'

"(23) [' Nuisance' includes any act, omission, place or thing, which causes or is likely to cause injury, danger, annoyance, disturbance or offence to the sense of sight, smell or hearing or to rest or sleep or which is or may be dangerous to life or injurious to health or property."]

"Nuisance."

(24) " Occupier " includes any person for the time being paying or liable to pay to the owner the rent or any portion of the rent of the land or building or part of the same in respect of which the word is used, [or damages on account of the occupation of such land, building or part and also a rent free tenant.]

'Occupier "

(25) " Ordinary election " means an election held to fill a vacancy in the office of divisional councillor or in any other elective office arising by efflux of time.

"Ordinary election."

"Owner."

(26) "Owner" includes (*a*) the person for the time being receiving or entitled to receive whether on his own account or as agent, trustee, guardian, manager or receiver for another person or for any religious or charitable purpose the rent or profits of the property, in connection with which the word is used, (*b*) the person for the time being in charge of the animal or vehicle, in connection with which the word is used.

"Prescribed."

(27) "Prescribed" means prescribed by Our Government by rules made under this Act.

"Private street."

(28) "Private street" means any street, road, square, court, alley, passage or riding path which is not a "public street" but does not include a pathway made by the owner of premises on his own land to secure access to or the convenient use of such premises.

"Public street."

(29) "Public street" means any street, road, square, court, alley, passage or riding path whether a thorougfare or not, over which the public have a right of way, and includes —

(*a*) the road-way over any public bridge or causeway,

(*b*) the foot-way attached to any such street, public bridge or causeway, and

(*c*) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, veranda, or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property is private property or property belonging to Our Government.

(30) "Re-construction" of a buildig includes—

"Re-construction."

(*a*) re-erection, wholly or partially, of a building after more than one-half of its cubical content has been taken down or burnt down or has fallen down, whether at one time or not;

(*b*) the re-erection, wholly or partially, of any building of which an outer wall has been taken down or burnt down or has fallen down to or within ten feet of the ground adjoining the lowest storey of the building, and of any frame building, which has so far been taken down or burnt down or has fallen down as to leave only the frame-work of the lowest storey;

(*c*) the conversion into a dwelling-house or a place of public worship of any building not originally constructed for human habitation or for public worship, as the case may be, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only or the conversion of a dwelling-house into a factory;

(*d*) re-conversion into a dwelling-house or a place of public worship or a factory of any building which has been discontinued as, or appropriated for any purpose other than, a dwelling-house or a place of public worship or a factory, as the case may be.

"Residence," "Reside."

(31) A person is deemed to have his "residence" or to "reside" in any house [or hut] if he sometimes uses any portion thereof as a sleeping apartment, and a person is not deemed to cease to reside in any such house [or hut] merely because he is absent from it or has elsewhere another dwelling in which he resides if he is at liberty to return thereto at any time and has not abandoned his intention of returning.

"Rubbish."

(32) "Rubbish" means dust, ashes, broken bricks, mortar, broken glass, and refuse of any kind which is not "filth."

"Salary."

(33) "Salary" means pay and acting pay, or payment by way of commission and includes exchange compensation allowances, but not allowances for house-rent, carriage hire, or travelling expenses.

"Scavenger."

(34) ["Scavenger" means a person employed in collecting or removing filth, in cleansing drains, latrines or slaughter-houses or in driving carts used for removal of filth.]

"Street alignment."

(35) "Street alignment" means a line dividing the land comprised in and forming a part of a street from the adjoining land.

"Water-course"

(36) ["Water-course" includes any river, stream or channel whether natural or artificial]

"Year."

(37) "Year" means the financial year.

PART II.

CONSTITUTION AND GOVERNMENT OF THE CORPORATION.

CHAPTER II—THE MUNICIPAL AUTHORITIES.

Composition of the Corporation.

Enumeration of authorities.

4. The Municipal authorities charged with carrying out the provisions of this Act are—

(*a*) a Council,
(*b*) Standing Committees of the Council, and
(*c*) a Commissioner.

5. (1) The Council shall consist of thirty-two councillors elected or appointed as follows:—

Constitution of the Council.

(*a*) twenty-four elected divisional councillors, and

(*b*) eight appointed by Our Government [of whom one shall be a woman.]

(2) The Council shall, by name of the Corporation of Trivandrum, be a body corporate, and have perpetual succession and a common seal and may by such name sue and be sued.

6. (1) There shall be three Standing Committees dealing respectively with (1) taxation and finance, (2) works, and (3) health.

Constitution of Standing Committees.

(2) The Council may with the previous sanction of Our Government constitute additional Standing Committees for such purposes as the Council thinks fit.

7. The Commissioner shall be appointed by Our Government and shall not be a member of the Council.

Definition of Commissioner.

THE SEVERAL AUTHORITIES.

The Commissioner.

8. (1) The Commissioner shall hold office for a renewable period of three years.

Term of office of Commissioner.

(2) Our Government may at any time remove the Commissioner from office and shall do so if, at a special meeting of the Council called for the purpose, not less than twenty-four councillors vote for such removal.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Commissioner shall continue to hold office until his successor assumes charge of the office.

9. Subject, whenever it is hereinafter expressly directed, to the sanction of the Council or the Standing Committee, as the case may be, and subject to all other restrictions, limitations and conditions hereinafter imposed, the executive power for the purposes of carrying out the provisions of this Act shall be vested in the Commissioner, who shall also perform all the duties and exercise all the powers specifically imposed or conferred on him.

Powers of Commissioner.

10. The Commissioner shall be responsible for the custody of all the records of the Corporation including all papers and documents connected with the proceedings of

Custody of records.

the Council, the Standing Committees and other committees, and shall arrange for the performance of such duties relative to the proceedings of the said bodies as they may respectively impose.

Extraordinary powers of Commissioner.

11. The Commissioner may, in cases of emergency, direct the execution of any work or the doing of any act which would ordinarily require the sanction of one or the other Municipal authorities and the immediate execution of doing of which is, in his opinion, necessary for the service or safety of the public and may direct that the expense of executing the work or of doing the act shall be paid from the municipal fund:

Provided that he shall report forthwith the action taken under this Section and the reasons therefor to such other authority.

Duty of Commissioner.

12. The Commissioner shall be whole time officer of the Corporation and shall not undertake any work unconnected with his office without the sanction of Our Government and the Corporation.

Salary of Commissioner.

13. The Commissioner shall be paid out of the Municipal fund such salary and allowances [not exceeding rupees six hundred per mensem in the aggregate] as may from time to time be fixed by Our Government.

Leave of Commissioner.

14. (1) Leave may be granted to the Commissioner by Our Government.

(2) Whenever such leave is granted, Our Government shall appoint some person to officiate in his place.

Service regulations of Commissioner.

15. (1) If the Commissioner is an officer in the service of Our Government, the Corporation shall contribute to his leave allowances and pension to the extent required by Our Government.

(2) If the Commissioner is not an officer in the service of Our Government his leave and leave allowances, his superannuation or retirement, and his gratuity or pension shall be governed by rules framed by Our Government.

Delegation of Commissioner's ordinary powers.

16. The Commissioner may delegate to the holder of any Municipal office any of his ordinary powers, duties or functions except those conferred or imposed upon or vested in him by the following provisions, namely, Sections 25 (3), 57, 58, 59, 60, 68, 69, 75, 159, 173 (2), 181 (2) and (3), 182, 183, 186, 197, 220, 221, 259, 268, 275, 279, 286, 287, 288, 294, 295, 296, 297, 303, 304, 310, 319, 321, 324, 335, 339, 340, 351, 402, 421, Schedule II, Rule 23, Schedule III, Rules 12 and 13:

Provided that—

(*a*) such delegation shall be in writing and shall specify the name or official designation of the person to whom the delegation is made ;

(*b*) the Commissioner shall not without the previous sanction of Our Government delegate his power under Section 85 to make appointments ;

(*c*) the Commissioner shall not delegate to the holder of any office his power under Section 91 to fine, reduce, suspend, remove or dismiss any employee, or his power under Section 92, to grant leave of absence to any employee, unless such employee was appointed by the holder of such office by virtue of a delegation of the Commissioner's powers of appointment ; and

(*d*) When the Commissioner delegates under this Section any power or duty which is exercisable or is required to be performed subject to the approval of any other municipal authority, the Commissioner shall send a copy of the order of delegation to such authority

Reservation of control in respect of powers delegated.

17. The exercise or discharge by a municipal officer of any powers, duties or functions delegated to him under Section 16 shall be subject to such restrictions, limitations and conditions (if any) as may be laid down by the Commissioner and shall also be subject to his control and revision.

Delegation of Commissioner's extraordinary powers.

18. The Commissioner may on his own responsibility and by an order in writing authorise the health officer or the engineer or the revenue officer or any person in temporary charge of the duties of the health officer, engineer or revenue officer to exercise the extraordinary powers conferred on him by Section II.

The Standing Committees.

Election of standing Committees.

19. (1) Each Standing Committee shall consist of five members elected by the Council from its own number ; Provided that no councillor shall be a member of more than two Standing Committees at the same time.

(2) A councillor elected to be a member of a Standing Committee shall hold office as such, unless he sooner resigns the same, till his term of office as councillor is in any manner determined.

(3) When a vacancy occurs in a Standing Committee the Council shall fill up the vacancy as soon as may be by the election of another councillor.

Functions of Standing Committees.

20. (1) The Council shall by regulations framed for the purpose determine the powers and duties of each Standing Committee and may by such regulations provide for a conference of two or more Standing Committees or for the appointment out of such Committees of a joint committee for any purpose in respect of which they may be jointly interested.

(2) The "taxation and finance" Standing Committee in addition to the powers and duties assigned to it under such regulations—

(a) shall supervise the utilisation of the budget grants,

(b) shall have access to the accounts of the Corporation and may require the Commissioner to furnish any explanation which it considers to be necessary as to the receipts and expenditure of the municipal fund;

(c) may conduct a monthly audit of the municipal accounts and shall be bound to check the monthly abstract of receipts and disbursements for the preceding month as furnished by the Commissioner; and

(d) may write off such sums due to the Corporation as appear to the Committee to be irrecoverable.

[(3) The Council shall sanction such staff as may reasonably be required by the taxation and finance Standing Committee to discharge its functions.]

Construction of references to Standing Committee.

21. Whenever in this Act the expression "the Standing Committee" occurs, it shall, unless the context otherwise requires, be deemed to refer to the particular Standing Committee to which the power or duty in connection with which the expression is used, is assigned by this Act or by regulations made by the Council; and all references to the Standing Committee in any other law shall be construed as references to the particular Standing Committee to which the power or duty conferred or imposed by such law is assigned by regulations made by the Council

Delegation of powers to Commissioner by Standing Committees.

22. (1) In any case in which it is provided by this Act or any other law that the Commissioner may take action subject to the approval, sanction, consent or concurrence of a Standing Committee, the Committee may, by resolution in writing, authorise him to take action in anticipation of its approval, sanction, consent or concurrence subject to such conditions (if any) as may be specified in such resolution.

(2) Whenever the Commissioner, in pursuance of such resolution, takes any action in anticipation of the approval, sanction, consent or concurrence of a Standing Committee, he shall forthwith inform the Committee of the fact.

The Council.

Functions of Council.

23. (1) Subject to the provisions of this Act the municipal government of the City shall vest in the Council, but the Council shall not be entitled to exercise functions expressly assigned by or under this Act or any other law to a Standing Committee or the Commissioner.

(2) If any doubt arises as to the municipal authority to which any particular function pertains, the Mayor shall refer the matter to Our Government whose decision shall be final.

(3) Without prejudice to the generality of sub-section (1), it shall be the duty of the Council to consider all periodical statements of receipts and disbursements and all progress reports and pass such resolutions thereon as it thinks fit.

Obligation laid on remaining Municipal authorities to carry out resolutions of Council.

24. The Standing Committees and the Commissioner shall be bound to give effect to every resolution of the Council unless such resolution is cancelled in whole or in part by Our Government.

Duties and powers of individual Councillors.

25. (1) Any Councillor may call the attention of the proper authority to any neglect in the execution of municipal work, to any waste of municipal property, or to the wants of any locality, and may suggest any improvements which he considers desirable.

(2) Every councillor shall have the right to interpellate the Mayor on matters connected with the municipal administration subject to such regulations as may be framed by the Council.

(3) Every councillor shall have access during office hours to the records of the Corporation after giving due notice to the Commissioner, provided that the Commissioner may, for reasons given in writing, forbid such access. The Councillor may appeal against such order to the Mayor whose decision shall be final.

Mayor or Councillor not to receive remuneration.

[26. Neither the Mayor nor any Councillor shall receive or be paid from the funds at the disposal of or under the control of the Corporation any salary or other remuneration for services rendered by him in any capacity whatsoever.]

Requisitions by Council or a Standing Committee for Commissioner's records.

27. (1) The Council or a Standing Committee may at any time require the Commissioner:—

(*a*) to produce any record, correspondence, plan or other document which is in his possession, or under his control as Commissioner;

(*b*) to furnish any return, plan, estimate, statement, account or statistics connected with the municipal administration;

(*c*) to furnish a report by himself or to obtain from any head of department subordinate to him and furnish with his own remarks thereon, a report upon any object connected with the municipal administration.

(2) The Commissioner shall comply with every such requisition unless in his opinion immediate compliance therewith would be prejudicial to the interests of the Corporation or of the public, in which case he shall make a declaration in writing to that effect and shall, if required by the Council or the Standing Committee, as the case may be, refer the question to the Mayor whose decision shall be final.

28. The Council may at any time call for an extract from the proceedings of a Standing Committee or of any committee for any return, statement, account, or report connected with any matter with which such committee is empowered to deal; and every such requisition shall be complied with by the Standing Committee, or other committee, as the case may be.

Council's power to call for records of Committees.

Provisions common to the Council and the Standing Committees.

29. The Council shall at its first meeting after the first day of Medom in each year elect one of its number to be its Mayor and each Standing Committee shall at its first meeting after that date in each year elect one of its members (other than the Mayor) to be its Chairman:

Election of Mayor and Chairman.

Provided that it shall be competent for Our Government to declare by notification in our Government Gazette, that the Mayor shall be ap pointed by Our Government and likewise to withdraw the notification and so long as such notification is in force, the Council shall not proceed to elect a Mayor and whenever a vacancy occurs in the office of Mayor Our Government shall appoint a Mayor for the Council.

30. The Mayor or chairman shall be entitled to hold office till the election or appointment of his successor, provided that in the meantime he does not cease to be a councillor.

Term of office of Mayor and Chairman.

On the occurrence of any vacancy in the office of Mayor or chairman, the Council or Standing Committee, as the case may be, shall at its next meeting elect a successor, who shall be entitled to hold office so long as the person in whose place he is elected would have been entitled to hold it if the vacancy had not occured.

Re-eligibility of Mayor and Chairman.

31. An out-going Mayor or chairman is eligible for re-election.

32. The Council and the Standing Committees shall observe the procedure laid down in Schedule I and may make supplementary regulations not inconsistent therewith [or with other provisions of this Act or with any rules made by Our Government] for the conduct of their respective proceedings, and also for the maintenance of order at their meetings.

Rules and regulations for proceedings of Council and Standing Committees.

[Explanation—Any supplementary regulation made under this section shall if it is inconsistent with the provisions of any rule made subsequently become void to the extent of such inconsistency.]

Presidency of Council and Standing Committees.

33. (1) The Mayor shall preside at meetings of the Council, and in his absence a councillor shall be chosen by the meeting to preside for the occasion

(2) The chairman of each Standing Committee shall preside at meetings of that body, and in his absence a member shall be chosen by the meeting to preside for the occasion.

(3) The Mayor or the chairman, as the case may be, shall preserve order and shall decide all points of order and procedure arising at or in connection with meetings. There shall be no discussion on any point of order [except with the permission of the Mayor or Chairman] and [any decision on any point of order."] shall, save as is otherwise expressly provided in this Act, be final.

(4) The councillor presiding at a meeting of the Council and the member presiding at a meeting of a Standing Committee shall for that meeting have all the powers and be subject to all the obligations of the Mayor or chairman, as the case may be.

Commissioner's right to attend and take part in discussion but not to move resolution or to vote.

34. (1) The Commissioner shall have the right to attend the meetings of the Council and of any Standing Committee and to take part in the discussion but shall not have the right to move any resolution or to vote.

(2) He shall attend any meeting of the Council or of a Standing Committee if required to do so by the Mayor.

Councillors to abstain from taking part in discussion and voting on questions in which they are pecuniarily interested.

35. (1) No councillor shall vote on or take part in the discussion of any question coming up for consideration at a meeting of the Council or of any Standing Committee or any committee, if the question is one in which, apart from its general application to the public, he has any direct or indirect pecuniary interest by himself or his partner.

(2) The Mayor or chairman may prohibit any councillor from voting on or taking part in the discussion of any matter in which the councillor is believed to have such interest, or he may require the councillor to absent himself during the discussion.

(3) Such councillor may challenge the decision of the Mayor or chairman, who shall thereupon put the question to the meeting. The decision of the meeting shall be final

(4) If the Mayor or Chairman is [alleged] by any councillor present at the meeting to have any such interest in any matter under discussion, he may, on the motion of such councillor if carried, be required to absent himself from the meeting during the discussion.

[(5) The Councillor concerned shall not be entitled to vote on the question referred to in sub-section 3 and the Mayor or Chairman concerned shall not be entitled to vote on the motion referred to in sub-section (4).

Explanation.—In this section Mayor includes a Councillor presiding for the occasion and Chairman includes a member presiding for the occasion at a meeting of a committee.]

36. (1) Any councillor other than the Mayor may resign his office by giving notice to the Mayor ; the Mayor may resign by giving notice to the Council.

Power to resign.

(2) Any member of a Standing Committee other than the Chairman may resign by giving notice to the Chairman of the Standing Committee; the chairman may resign by giving notice to the Mayor,

["(3) Such resignation shall take effect in the case of the Mayor from the date on which it is placed before the Council and in any other case from the date on which it is received by the Mayor or Chairman as the case may ."]

37. (1) No act done, or proceeding take under this Act shall be questioned merely on the ground—

Saving of validity of proceedings.

(*a*) of any vacancy or defect in the constitution of the Council, or of any Standing Committee. or

(*b*) of any defect or irregularity in such act or proceeding, not affecting the merits of the case.

(2) Every meeting of the Council, or of a Standing Committee, the minutes of the proceedings at which have been signed as laid down in Schedule I, shall be deemed to have been duly convened and to be free from all defects and irregularity.

The Mayor of Council.

[" 38. (1) The Mayor shall have full access to all the records of the Corporation and may obtain reports from the Commissioner on any matter connected with the administration of the Corporation.

Prerogative of the President.

(2) No official correspondence between the Corporation and Our Government shall be conducted except through the Mayor.

(3) The Mayor shall be bound to transmit communications addressed through him by the Commissioner to Our Government or by our Government to the Commissioner. While transmitting communications from the Commissioner to Our Government the Mayor may makes such remarks as he may think necessary."

" 39. (1) The Mayor shall ex-officio be a member of every Standing Committee and of every other committee constituted under this Act but shall not be eligible to be elected as the Chairman of any Standing Committee."

President to be member of all Committee.

" (2) If the Mayor was at the time of his election the Chairman or an elected member of a Standing Committee, he shall cease to hold office as such Chairman or member."

"(3) If a vacancy occurs in the office of Chairman of any Standing Committee the Mayor shall convene a meeting of that Committee for the election of another Chairman"]

Administration Report.

Submission of administration report to Government.

40. (1) As soon as may be after the first day of Chingom in every year and not later than such date as may be fixed by Our Government, the Corporation shall submit to Our Government a detailed report of the administration during the preceding year in such form as Our Government may direct.

(2) The Commissioner shall prepare such report and the Council shall consider the report and forward the same to Our Government with their resolutions thereon, if any.

(3) Copies of the administration report shall be kept for sale at the Municipal office.

Powers of Government.

Government's power to call for records

41. Our Government may at any time require the Council or the Commissioner—

(*a*) to produce any record, correspondence, plan, or other document :

(*b*) to furnish any return, plan, estimate, statement, account or statistics ; and

(*c*) to furnish or obtain any report.

Appointment of Officers to superintend operations of the Corporation.

42. (1) Our Government may, from time to time, appoint such officers as may be required for the purpose of inspecting or superintending the operations of the Corporation and also such secretaries, clerks and other servants as may be necessary for the exercise of their powers and duties and assign to them such salaries, if any, as Our Government shall think reasonable and the expenses incurred by reason of such appointments shall be defrayed out of the funds of the Corporation.

Government's power to cause inspection to be made.

(2) Our Government may also depute any officer to inspect or examine any Municipal department, office, service, work or thing and to report thereon and any officer so deputed may, for the purposes of such inspection or examination, exercise all the powers conferred by Section 41.

Government's power to direct the taking of action.

43. If, on receipt of any information or report obtained under Section 41 or 42, Our Government are of opinion

(*a*) that any duty imposed on any Municipal authority by or under this Act has not been performed or has been performed in an imperfect, inefficient or unsuitable manner, or

(*b*) that adequate financial provision has not been made for the performance of any such duty, Our Government may, by an order, direct the Council or the Commissioner within a period to be specified in the order, to make arrangements to their satisfaction for the proper performance of the duty or to make financial provision to their satisfaction for the performance of the duty, as the case may be :

Provided that, unless in the opinion of Our Government, the immediate execution of such order is necessary, Our Government shall, before making an order under this Section, give the Council an opportunity of showing cause why such order should not be made.

Government's power to appoint a person to take action in default at expense of Corporation.

44. (1) If, within the period fixed by an order issued under Section 43, any action directed under that Section has not been duly taken, Our Government may by order—

(*a*) appoint some person to take the action so directed,

(*b*) fix the remuneration to be paid to him and

(*c*) direct that such remuneration and the cost of taking such action shall be defrayed out of the Municipal fund, and if necessary, that any one or more of the taxes authorised by Part III of this Act shall be levied or increased, but not so as to exceed any maximum prescribed by that Part.

(2) For the purpose of taking the action directed as aforesaid the person appointed under sub-section (1) shall have power to make such contracts as are necessary, may exercise any of the powers conferred on any Municipal authority by or under this Act and specified in this behalf in the order issued under sub-section (1), and shall be entitled to protection under this Act as if he were a Municipal authority.

(3) Our Government may, in addition to, or instead of, directing the levy or increase of any of the said taxes direct by notification that any sum of money which may in their opinion be required for giving effect to their orders be borrowed by debenture on the security of all or any of the said taxes at such rate of interest and upon such terms as to the time of repayment and otherwise as may be specified in the notification.

(4) The provisions of Sections 147 to 158 shall, as far as may be, apply to any loan raised in pursuance of this Section.

Submission of copies of proceedings, resolutions and bye-laws to Government; Government's power to cancel resolutions and bye-laws.

45. (1) The Mayor shall submit to Our Government copies of all resolutions and all bye-laws.

(2) Our Government may, at any time by notification—

(*a*) cancel any resolution in whole or in part on the ground that it is in excess of the powers conferred by this Act or by any rules made under this Act ; or

(*b*) repeal wholly or in part or modify any bye-law :

Provided that before taking any action under this sub-section Our Government shall communicate to the Council the grounds on which they propose to do so, fix a reasonable period for the Council to show cause against the proposal and consider its explanation and objections, if any.

(3) The repeal or modification of any bye-law shall take effect from the date of publication of the notification, if no date is therein specified, and shall not affect anything done, omitted or suffered before such date.

CHAPTER III.—ELECTION AND APPOINTMENT OF COUNCILLORS.

Qualifications and Disqualifications of Voters, Candidates and Councillors.

Twenty four election divisions.

[46. (1) For the purposes of the election of the divisional councillors to fill the twenty four seats referred to in clause (a) of sub-section (1) of Section 5, the City shall be divided into twenty-four territorial divisions the boundaries of which shall be fixed by Our Government by Notification in Our Government Gazette.

(2) Our Government may after consulting the Council, by Notification a aforesaid, alter the boundaries of any such division.

Election of one councillor for each division.

47. One divisional councillor shall be elected by ballot for each division of the city.

Publication of electoral roll.

48. (1) The Commissioner shall annually prepare and publish an electoral roll showing the names of persons qualified to vote, divided into separate lists for each division provided that the electoral roll published in any year shall remain in force till the publication of a fresh electoral roll.

(2) No person whose name does not appear in the electoral roll as qualified to vote shall vote at an election.

General qualifications to vote.

49. No person shall be included in the electoral roll as qualified to vote unless—

(*a*) he has attained the age of twenty-one years in the year preceding that in which the electoral roll is published ; and

(*b*) he has paid the taxes, if any, due by him [under clauses (*a*) (*b*) and (*c*) Section 93 for such preceding year.]

Personal qualifications to vote.

50. (1) No person shall be included in the electoral roll as qualified to vote at the election for a division unless he has resided in such division for one hundred and twenty days in the aggregate in the year preceding that in which the electoral roll is published and has paid in such preceding year any tax mentioned in clause (*a*), (*b*) or (*c*) of Section 93.

Explanation 1.—A person shall be deemed to have made the payment required by clause (*a*) if he has paid the tax as sole mortgagee tenant or guardian.

Explanation 2.—For the purposes of this sub section, no person, shall be deemed to reside in more than one division.

[(2) If a company or association has or the members of a family jointly have paid the tax referred to in sub-section (1) the company or association or family shall be treated as possessing the qualification, and the person entitled to be registered in the electoral roll shall be the secretary of the company or association or some other person duly authorised in that behalf or the member authorised by a majority of the family or in the case of a joint Hindu family, either a member so authorised or in default of such authorisation, the manager thereof. The person so entitled shall be included in the electoral roll of the division in which the principal office in the City of the company or association or the principal residence in the City of the family, as the case may be, is situated.]

Disqualification of voters.

51. No person who is of unsound mind or a deaf-mute shall be qualified to vote and no person shall be qualified to vote during the period for which he has been declared to be disqualified by a judicial order passed under Section 66, and still in force.

Qualification of candidates.

52. No person shall be qualified for election as a councillor unless the name of such person appears on the electoral roll of any one division of the City.

Disqualification of candidates

[53 (1) A person shall be disqualified for election or appointment as a councillor, if such person has been at any time sentenced by any court to any punishment other than fine for any non-bailable offence, such sentence not having been subsequently reversed or quashed.

(2) A person shall be disqualified for election or appointment as a councillor if such person is at the date of nomination or election or appointment,—

(*a*) of unsound mind, a deaf-mute or a leper;

(*b*) an applicant to be adjudicated a bankrupt or insolvent or an uncertified bankrupt or undischarged insolvent;

(*c*) directly or indirectly by himself or his partner interested in a subsisting contract made with, or any work being done for the Corporation.

Provided that a person shall not be deemed to have any interest in such contract or work by reason only of his having a share or interest in ,

(i) any lease, sale or purchase of immovable property or any agreement for the same;

(ii) any agreement for the loan of money or any security for the payment of money only;

(iii) any newspaper in which any advertisement relating to the affairs of the Corporation is inserted;

(iv) any company or association whether incorporated or not which contracts with the Corporation for lighting or supplying with water any part of the City or insuring against fire any property of the Corporation;

(v) any company otherwise than as director, manager or managing agent of such company;

(vi) the sale to the Corporation of any articles in which he regularly trades or the purchase from the Corporation of any articles;

(*d*) an officer or servant holding office under this Act ;

(e) already a councillor whose term of office as such will not expire before his fresh election or appointment can take effect or has already been elected a councillor whose term of office has not yet commenced.

(3) A person shall be disqualified.

(*a*) for election as a councillor if such person is at the date of nomination or election, a whole-time officer or servant of Our Government or an Honorary Magistrate;

(*b*) for appointment as a councillor if sucn person is a District Munsiff, a District Judge or a High Court Judge or a Magistrate.

(4) Notwithstanding anything contained in sub-section (1), Our Government may direct that such sentence shall not operate as a disqualification.

(5) No person shall be qualified for election or appointment during the period for which he has been declared to be disqualified by a judicial order passed under Section 66 and still in force.

[54 (1) Subject to the provisions of Section 56, a councillor shall, cease to be a councillor if he—

Disqualification of councillors.

(*a*) is sentenced by a court as described in Section 53, sub-section (1)

(*b*) becomes of unsound mind, a deaf-mute or a leper;

(*c*) applies to be adjudicated or is adjudicated a bankrupt or insolvent;

(*d*) subject to the proviso to clause (*c*) of sub-section (2) of Section 53, acquires any interest directly or indirectly by himself or his partner in any subsisting contract made with or work being done or to be done for the Corporation

(*e*) is employed or retains employment as paid legal practitioner on behalf of the Corporation or receives or be paid from the funds at the disposal of or under the control of the Council, any salary or other remuneration for services rendered by him in any capacity what-soever;

(*f*) accepts or retains employment as legal practitioner against the Corporation

(*g*) is appointed to and accepts any office or post referred to in clause (*d*) of sub-section (2) or sub-section (3) of Section 53;

(*h*) is declared to be disqualified by a judicial order passed under Section 66 as still in force;

(*i*) ceases to reside in the city;

(*j*) fails to attend the meetings of the Council for a period of three consecutive months.

(2) Notwithstanding anything contained in clause (*a*) of sub-section (1) Our Government may direct that such sentence shall not operate as a disqualification.

(3) Notwithstanding anything contained in clause (*g*) of sub-section (1), Our Government may direct that any appointment and acceptance thereof other than that mentioned in clause (*d*) of sub-section (2) and clause (*b*) of sub-section 3 of Section 53 shall not operate as a disqualification in the case of those appointed under clause (*b*) of sub-section (1) of Section 5.

(4) Where a person ceases to be a councillor under clause (*a*) or clause (*g*) or clause (*h*) of sub-section (1), he shall be restored to office for such portion of the period for which he was elected or appointed as may remain unexpired on the date of such restoration if and when the sentence or order is annulled on appeal or revision or the disqualification caused by the sentence or acceptance of employment is removed by an order of Our Government under sub-sections (2) and (3).

(5) In the case of a person who has ceased to be a councillor in consequence of failure to attend meetings, the matter shall be reported by the Commissioner at the next general meeting and the council may at that meeting restore such person to office].

Oath of allegiance to be taken by councillors.

[55. (1) Every person who is elected or appointed to be a councillor shall before taking his seat make at a meeting of the council an oath or affirmation of his allegiance to the Sovereign in the following form, namely :—

I, A. B., having been elected a councillor/appointed a councillor of this council do solemnly swear/affirm that I will be faithful and bear true allegiance to His Highness the Maharaja, his heirs and successors and that I will faithfully discharge the duties upon which I am about to enter.

(2) Any person who having been elected or appointed to be a councillor, fails to make, within three months of the date on which his term of office commences or at one of the first three meetings held after the said date, whichever is later, the oath or affirmation laid down in sub-section (1) shall cease to hold his office and his seat shall be deemed to have become vacant.

(3) Any person who has been elected or appointed to be a councillor shall not take his seat at a meeting of the council or do any act as such councillor unless he has made the oath or affirmation as laid down in sub-section (1).

(4) Notwithstanding anything contained in sub-section (3), a Mayor or the chairman or a member of a Standing Committee, who has not made the oath or affirmation as a Councillor shall be entitled to act as such Mayor, chairman or member:

Provided that he makes the oath or affirmation and takes his seat at the first meeting of the council which he attends within two months after he is elected as a Mayor, chairman or member, as the case may be.].

Decision of question of disqualification of councillors by the District Court, Trivandrum.

56. (1) Whenever it is alleged that any person who has been elected or appointed as a councillor is disqualified under [Section 53 or Section 54 or Section 55] and such person does not admit the allegation or whenever any councillor is himself in doubt whether or not he has become dis-qualified for office such councillor or any other councillor may, and the Commissioner, a the request of the Council [or on a direction from Our Government] shall apply to the District Court of Trivandrum.

(2) The said Court, after making such enquiry as it deems necessary, shall determine whether or not such person is disqualified under [Section 53 or Section 54 or Section 55] and its decision shall be final.

["(3) Until an application has been made under sub-section (1) and a decision thereon has been obtained such person shall be entitled to act as if he were not disqualified."]

General Rules for Election and Appointment.

57. (1) The term office of divisional councillors shall, save as otherwise expressly provided be three years beginning and expiring at noon on the first day of Medam.

Election of divisional councillors.

(2) Vacancies arising by efflux of time in the office of divisional councillor shall be filled at ordinary elections, which shall be fixed by the Commissioner to take place on such days in the months of Kumbhom and Meenom [immediately] preceding the vacancies as he thinks fit.

(3) A casual vacancy in the office of divisional councillor shall be filled at a casual election which shall be fixed by the Commissioner to take place as soon as may be after the occurrence of the vacancy :

Provided that no casual election shall be held to fill a vacancy occurring within three months before the ordinary date of retirement and that such vacancy shall be filled at the next ordinary election.

(4) A divisional councillor elected at a casual election shall enter upon office forthwith but shall hold office so long only as the councillor in whose place he is elected would have been entitled to hold office if the vacancy had not occurred,

58. (1) If from any cause no councillor is elected at an ordinary election held under Section 57 the retiring councilor shall, if willing to serve, be deemed to have been re-elected.

Procedure on failure of election.

(2) If, in any such case the retiring councillor is not willing to serve, or if at a casual election no councillor is elected. the Commissioner shall without delay inform the Council and thereupon the Council may appoint a qualified. person to fill the vacancy, and if the Council fail within thirty days after receipt of such information to appoint a person as aforesrid, the Commissioner shall fix a day for a fresh election.

(3) The term of office of a councillor appointed, elected or deemed to have been re-elected under this Section shall expire at the time at which it would have expired if he had been elected at the ordinary or the casual election, as the cas may be.

59. (1) If any person has been elected for more divisions than one, he shall within three days from the date of the last of such elections intimate to the Commissioner the division for which he chooses to serve.

Election of same person for more than one division.

(2) In default of such intimation the Commissioner shall notify the division for which such person shall serve

(3) The said person shall be deemed to have been elected only for the division so chosen or so notified, as the case may be : and the vacancies thereby arising in the representation of other divisions shall be filled by fresh elections.

60. If there is an equality of votes between two or more candidates, the Commissioner shall after notice to all such candidates decide by drawing lots which candidate shall be deemed to have been elected.

Procedure in case of equality of votes.

[61. All the elections of the Mayor and all elections and appointments of councillors shall be notified in Our Government Gazette]

[62 (1) Our Government may make rules regulating the procedure with regard to divisional and other elections and appointments.

Power of Government to make election rules.

(2) Without prejudice to the generality of sub-section (1) such rules may—

(a) regulate the preparation, revision and publication of electoral rolls;

(b) provide for the adjudication by the District Court of Trivandrum of disputes relating to electoral rolls or arising out of elections or appointments;

(c) provide for all matters not expressly provided for in this Act relating to the election of the Mayor, or councillors including deposits to be made by candidates standing for election as councillors and the conditions under which such deposits may be forfeited;

Provided that the deposit required shall not exceed one hundred rupees.]

63. Every councillor other than a divisional councillor shall, save as otherwise expressly provided, hold office for a term of three years from the date of Our Government Gazette wherein his appointment is notified.

Term of Office of councillors other than divisional councillors.

64. Whenever a vacancy occurs in the office of a councillor other than a divisional councillor a successor shall forthwith be appointed by Our Government.

Filling vacancy in office of councillor other than divisional councillor.

Election Offences.

65. Every polling officer, clerk or other person in attendance at the polling room who, except for some purpose authorised by law, communicates to any person any information showing directly or indirectly for which candidate any voter has voted, and every person who by any improper means procures any such information, shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

Infringement of secrecy of election.

[66. Every person convicted of an offence punishable under Section 65 or under Chapter IX A of the Travancore Penal Code shall be disqualified from voting or from being elected in any election to which this Act applies or from being appointed to the office of councillor, or from holding the office of councillor for a period of five years from the date of such conviction or for such shorter period as the Court may by order determine.]

Order of disqualification.

CHAPTER IV—GENERAL POWERS OF MUNICIPAL AUTHORITIES AS TO PROPERTY, CONTRACTS AND ESTABLISHMENT.

Property.

67. The Council may accept trust relating exclusively to the furtherance of purposes to which the municipal fund may be applied.

Limitation of power to accept property in trust

68. Subject to the provisions of Section 75, the Commissioner may, for the purposes of this Act, acquire on behalf of the Corporation movable or immovable property within or without the city or any interests in such property :

Acquisition of property and interests therein.

Provided that—

(*a*) the Commissioner shall be bound by any resolution of the Standing Committee fixing terms, rates or maximum prices for a particular case or for any class of cases ;

(*b*) the sanction of the Standing Committee shall be required for the exchange of any immovable property, for the taking of any property on lease for a term exceeding twelve months, or for the acceptance of any gift or bequest of property burdened by an obligation ; and

(c) the sanction of the Council shall be required —

(i) for the acceptance or acquisition of any immovable property if the value of the property which it is proposed to accept, acquire or give in exchange exceeds [two hundred and fifty rupees] ; or

(ii) for the taking of any property on lease for a term exceeding three years; or

(iii) for the acceptance of any gift or bequest of property burdened by an obligation if the value of such property exceeds [two hundred and fifty rupees.]

69. (1) Subject to the provisions of Section 75 the Commissioner, may dispose by sale or exchange of any municipal movable property the value of which does not exceed [two hundred and fifty] rupees in each instance, or grant for any term not exceeding twelve months a lease of any municipal immovable property or a lease or concession of any right of fishing or grazing or of gathering and taking fruit and the like ;

Provided that every such disposal, lease or concession made or granted by the Commissioner shall be reported to the Standing Committee within fifteen days.

(2) With the sanction of the Standing Committee, the Commissioner may dispose by sale or exchange of any municipal movable property the value of which does not exceed five thousand rupees in each instance or grant for any term not exceeding three years a lease of any municipal immovable property, or a lease or concession of any such right as aforesaid.

(3) With the sanction of the Council, the Commissioner may lease, sell or otherwise dispose of any municipal property, movable or immovable.

(4) The sanction of the Standing Committee under sub section (2) or that of the Council under sub-section (3) may be given either generally for any class of cases or specially for any particular case.

[(5) The Commissioner may lend or let out on hire any corporation movable property on such conditions and for such periods as may be specified in regulations made by the standing committee in that behalf.]

Procedure for acquisition of immovable property under the Land Acquisition Act.

70. Any immovable property which any Municipal authority is authorised by this Act to acquire may be acquired under the provisions of Land Acquisition Act, XI of 1089, and on payment of the compensation awarded under the said Act in respect of such property and of any other charges incurred in acquiring it, the said property shall vest in the Corporation.

[71. Our Government may with the consent of the council transfer to the corporation the management of any institution or the execution of any work not provided for by this Act and it shall thereupon be lawful for the corporation to undertake such management or execution.]

Contracts.

Power of council to determine whether works shall be executed by contract.

72. The Council may determine either generally for any class of cases or specially for any particular case whether the Commissioner shall execute works by contract or otherwise.

Powers of the several authorities to sanction estimates.

73. (1) The Commissioner may sanction any estimate, the amount of which does not exceed five hundred rupees.

(2) When the amount of the estimate exceeds five hundred rupees but does not exceed two thousand rupees, the sanction of the Standing Committee shall be required.

74. (1) Where a project is framed for the execution of any work or series of works the entire estimated cost of which exceeds two thousand rupees—

Works costing more than 2,000 rupees.

(*a*) the Commissioner shall cause a detailed report to be prepared including such estimates and drawings as may be requisite and the Standing Committee shall lay the same before the Council ;

(*b*) the Council shall consider the report and may reject the project or may approve it either in its entirety or subject to modifications.

(2) (*a*) Where the Council approves the project and the entire estimated cost exceeds five thousand rupees the report subject to any modifications as aforesaid, shall be submitted to Our Government.

(*b*) Our Government may reject the project or may sanction it either in its entirety or subject to modification.

(*c*) The work shall not be commenced until the project has been sanctioned by Our Government with or without modification.

(*d*) No material change in the project sanctioned as aforesaid shall be carried into effect without the sanction of Our Government.

75. (1) The Council may enter into and perform all such contracts as it may consider necessary or expedient for carrying into effect the provisions of this Act.

General Provisions regarding contracts.

(2) With respect to the making of contracts under or for any purpose of this Act, the following provisions shall have effect namely—

(*a*) every contract shall be made on behalf of the Corporation by the Commissioner ;

(*b*) no contract for any purpose which, in accordance with any provision of this Act, the Commissioner may not carry out without the sanction of one of the other Municipal authorities shall be made by him unless such sanction has been given ;

(*c*) no contract involving an expenditure exceeding five hundred rupees and not exceeding two thousand rupees shall be made by the Commissioner unless it has been sanctioned by the Standing Committee ;

(*d*) no contract involving an expenditure exceeding two thousand rupees shall be made by the Commissioner unless it has been sanctioned by the Council ; and

(*e*) every contract made by the Commissioner involving an expenditure exceeding three hundred rupees and not exceeding five hundred rupees shall be reported to the Standing Committee within fifteen days after it has been made.

(3) The provisions of sub-section (2) shall apply to any variation of a contract involving an increase of more than ten percentum on the expenditure involved in the original contract.

76. (1) Every contract entered into by the Commissioner on behalf of the Corporation shall be entered into in such manner and form as would bind him if it were made on his own behalf, and may in like manner and form be varied or discharged.

Mode of making contracts

Provided that—

(*a*) the common seal of the Corporation shall be affixed to every contract : and

(*b*) every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding three hundred rupees shall be in writing and shall be sealed with the common seal of the Corporation and shall specify —

(i) the work to be done or the materials or goods to be supplied, as the case may be,

(ii) the price to be paid for such work, materials or goods, and

(iii) in the case of a contract for work, the time within which the work or specified portions thereof shall be completed.

(2) The common seal of the Corporation shall remain in the custody of the Commissioner and shall not be affixed to any contract or other instrument except in the presence of the Commissioner or of two members of the Standing Committee and the Commissioner or the said two members shall sign the contract or instrument in token that the same was sealed in his or their presence.

(3) No contract executed otherwise than as provided in this Section shall be binding on the Corporation.

77. (1) At least seven days before entering into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditur exceeding three hundred rupees, the Commissioner shall give notice by advertisement inviting tenders for such contract:

Invitation of tenders

Provided that the Standing Committee may [at the instance of the Commissioner] and for reasons which shall be recorded in its proceedings, authorise the Commissioner to enter into a contract without inviting tenders.

(2) On receipt of the tenders made in pursuance of the notice given under subsection (1), the Commissioner may, subject to the provisions of Section 75, accept any tender which appears to him, upon a view of all the circumstances, to be the most advantageous, but he shall not reject all the tenders without the sanction of the Standing Committee.

78. When work is given on contract at unit rates and the number of units is not precisely determinable, the contract shall not be deemed to contravene the provisions of Section 75, Section 76, or Section 77, merely by reason of the fact that the pecuniary limits therein laid down are eventually exceeded.

Saving of certain Irregularities

79. The Commissioner shall take sufficient security for the due performance of every contract into which he enters after a tender has been accepted, and may take security for the due performance of any other contract into which he enters under this Act.

Security for performance of contracts

Establishment.

80. The Council shall appoint a Health officer, an Engineer and a Revenue officer, *and such other officers as it may Consider necessary* who shall be heads of departments working under the Commissioner:

The Health officer, the Engineer, and the Revenue officer

Provided that:—

(*a*) every such appointment shall be subject to confirmation by Our Government; and

(*b*) the monthly salary and allowances of such officers shall be such as are fixed by Our Government from time to time after ascertaining the views of the Council.

(2) The said offiicers shall be whole-time officers of the Corporation and shall not undertake any work unconnected with their respective offices without the sanction of the Corporation.

Special superior appointments

81. The Council may appoint:—

(*a*) special health officers for the purpose of making investigations and proposing preventive or remedial measures with reference to the occurrence of any unusual mortality or the prevalence or apprehended outbreak of any dangerous disease within the city;

(*b*) engineers, architects or experts in town improvement or town-planning for the purpose of preparing, executing or supervising any special scheme *or work* undertaken by the Corporation;

(*c*) special revenue officers for the purpose of carrying out a periodical revision of assessment, introducing a new tax or discharging any extraordinary duty connected with the revenue administration of the Corporation;

Provided that:—

(i) no such special office shall be created without the sanction of Our Government;

(ii) the period of duration of any such office, the salary, the allowances and the conditions of service attaching thereto shall be fixed by the Council, subject to the sanction of Our Government, save as expressly laid down in Section 83, and shall not be varied without the like sanction; and

(iii) every appointment to any such office shall be subject to confirmation by Our Government.

Time within which vacancy in superior appointment must be filled up

82. (1) If a vacancy occurs in any office specified in Sections 80 and 81 or any new office is created under Section 81, the Council shall within three months appoint some person to hold such office.

(2) If Our Government refuse to confirm the appointment so made, the Council shall make a fresh appointment within thirty days from the receipt of the order refusing confirmation.

(3) In default of any appointment or fresh appointment being made in accordance with sub-section (1) or sub-section (2), as the case may be, Our Government may appoint a person to hold the office and such person shall be deemed to have been appointed by the Council.

(4) Pending an appointment under sub-section (1) or sub-section (2), the Council may appoint a person to hold the office temporarily and may assign to him such salary as it shall think fit:

Provided always that the salary so assigned shall not exceed the maximum fixed by Our Government under Section 80 or fixed with the sanction of Our Government under Section 81 in respect of the office.

Removal and leave, pensionary and leave contributions of superior officers.

83. (1) Any officer appointed under Section 80, Section 81 or sub-section (3) of Section 82 may be removed from office by Our Government and shall be so removed if his removal is recommended by a resolution of the Council passed at a special meeting called for the purpose and supported by the votes of not less than twenty-four councillors.

[(2) Any such officer may be fined or suspended by Our Government on the recommendation of the Council.]

(3) Leave may be granted to any such officer by the Commissioner for periods not exceeding one month and by the Council for longer periods.

(4) If any such officer is an officer in the service of Our Government, the corporation shall contribute to his leave allowances and pension to the extent required by the rules of Our Government for the time being in force with respect to such officers.

(5) If any such officer is not an officer in the service of Our Government, his leave and leave allowances, his superannuation or retirement, his gratuity or pension, and the proportions of his pensionary contribution payable respectively from his salary and from the Municipal fund shall be governed by rules made by Our Government:

Provided that—

(*a*) the amount of any such leave and leave allowances, gratuity or pension shall in no case without the special sanction of Our Government exceed what would be admissible in the case of Government servants of similar standing and status; and

(*b*) the conditions under which such allowances are granted, or any leave, superannuation or retirement is sanctioned, shall not without similar sanction be more favourable than those for the time being prescribed for such Government servants.

Power of Government to appoint special health officers.

84. In the event of the occurrence of any unusual mortality or the prevalence or apprehended outbreak of any dangerous diseases within the City, Our Government, if they consider immediate action necessary, may of their own motion appoint a special health officer wholly or partly at the expense of the municipal funds:

Provided that--

(*a*) the duration of the special office shall not exceed six months; and

(*b*) the corporation shall not be bound to pay more than a moiety of the salaries and allowances fixed by Our Government for such officer,

Appointments to Municipal establishment.

85. Subject to the provisions of Sections 80, 81, 82 and 84 appointments to the Municipal establishment shall be made—

(*a*) by the Mayor, if the maximum monthly salary of the office exceeds one hundred rupees;

(*b*) by the Commissioner in all other cases

Establishment schedule.

86. (1) The Commissioner shall, from time to time, lay before the Standing Committee a schedule setting forth the designations and grades of the officers and servants who should in his opinion constitute the Municipal establishment, and embodying his proposals with regard to the salaries, fees and allowances payable to them.

(2) The Standing Committee may either approve or amend such schedule as it thinks fit and shall lay it before the Council with its remarks if any.

(3) The Council shall sanction such schedule with or without modifications as it thinks fit and may from time to time amend it at the instance of the Commissioner and Standing Committee:

Provided that no new office shall be created without the sanction of Our Government if the maximum monthly salary exceeds fifty rupees.

87. No officer or servant shall be entertained on the Municipal establishment unless he has been appointed under Section 80, Section 81, Section 82 or Section 84 or unless his office and emoluments are included in the schedule sanctioned under Section 86.

Restriction of employment of establishment

88. Subject to the provisions of this Act and to the bye-laws and regulations for the time being in force, the Commissioner shall prescribe the duties of the Municipal establishment and exercise supervision and control over their acts and proceedings and dispose of all questions relating to their conduct, service, pay, allowances, leave, pension and provident fund privileges.

Commissioner controls Municipal establishment

89. If an officer or servant serving or having served under the Corporation is or has been transferred from or to the service of Our Government, or is employed partly by Our Government and partly by the Corporation the Corporation shall contribute to his pension and leave allowances to the extent required by the rules made by Our Government in this behalf and for the time being in force

Contributions in respect of Government servants.

Power of standing committee to frame service regulations.

90. Subject to the provisions of this Act, the Standing Committee may frame regulations in respect of the Municipal establishment—

(*a*) fixing the amount and nature of security to be furnished;

(*b*) prescribing educational or other qualifications;

(*c*) regulating the grant of leave, leave allowances and acting allowances;

(*d*) regulating the grant of pensions and gratuities;

(*e*) establishing and maintaining provident funds and making contribution thereto compulsory;

(*f* regulating conduct; and

(*g*) generally prescribing conditions of service:

Provided that every regulation so framed shall be subject to confirmation by the Council, and that every regulation framed under clause (*d*) or clause (*e*) shall also require the sanction of Our Government:

Provided also (i) that the amount of any leave and leave allowances, gratuity or pension granted under these regulations shall in no case without the special sanction of Our Government exceed what would be admissible in the case of Government servants of similar standing and status, and (ii) that the conditions under which such allowances are granted or any leave, superannuation or retirement is sanctioned shall not without similar sanction be more favourable than those for the ime being prescribed for such Government servants.

[91. (1) Subject to the provisions of Section 89, if any officer or servant in the service of the corporation other than an officer appointed under Section 80, Section 81 or sub-section (3) of Section 82 is guilty of any breach of any departmental rules or discipline or of carelessness, neglect of duty or other misconduct, or is unfit, the authority competent to appoint such officer or servant may impose the following penalties on him namely :—

Power to punish establishment.

(i) censure ;

(ii) withholding of increments or promotion, including stoppage at an efficiency bar ;

(iii) reduction to a lower post or time-scale, or to a lower stage in a time-scale ;

(iv) fine ;

(v) recovery from pay of the whole or part of any pecuniary loss caused to the corporation ;

(vi) suspension ;

(vii) removal from the service of the corporation, which does not disqualify from future employment ; and

(viii) dismissal from the service of the corporation which ordinarily disqualifies from future employment.

(2) Any order passed under sub-section (1) shall be final:

Provided that any officer or servant in receipt of a monthly salary of not less than twenty rupees may appeal to the Mayor against any order of the Commissioner removing or dismissing him or suspending him for a period of more than one month :

Provided further that any officer or servant in receipt of a monthy salary exceeding one hundred rupees may appeal to Our Government against an orderof the Mayor, reducing, removing, dismissing or suspending him for aperiod of more than one month :

Provided also that no Government servant employed by the corporation shall be dismissed from such employment with out the consent of Our Government.

(3) Pending any order of the Mayor the Commissioner may suspend any officer appointed by the Mayor provided always that he shall forthwith report to the Mayor the reasons for his action]

92. Save as provided in Section 83, leave may be grented to the Municipal establishment by the Commissioner.

Power to grant leave to establishment.

PART III.

TAXATION AND FINANCE.

Chapter V—Taxation.

Enumeration of Taxes.

Enumeration of taxes duties and tolls.

93. The Council may levy—

(*a*) a property tax,

(*b*) a tax on companies,

(*c*) a profession tax,

(*d*) a tax on carriages and animals,

(*e*) a tax on carts,

(*f*) tolls on vehicles and animals entering the city, [and may with the previous sanction of Our Government, levy,

(*g*) a tax on advertisements, and

(*h*) a tax on entertainments.]

Powers of control of the Government.

[94 (1) Before the Council passes any resolution imposing a tax for the first time it shall direct the Commissioner to publish a notice in Our Government Gazette of its intention and fix a reasonable period not being less than one month from the date of such publication for submission of objuctions. The Council may, after considering the objections, if any, received within the period specified, determine by resolution to levy the tax. Such resolution shall specify the rate at which, the date from which and the period of levy, if any, for which such tax shall be levied.

(2) When the Council shall have determined to levy any tax for the first time or at a new rate, the Commissioner shall forthwith publish a notice in the manner laid down in sub-section (1), specifying the date from which, the rate at which and the period of levy, if any, for which such tax shall be levied.

(3) Any resolution abolishing an existing tax or reducing the rate at which any tax is levied shall not be carried into effect without the sanction of Our Government, but such sanction shall not be necessary for a resolution reducing the rate at which property tax is levied, provided that such reduc tion does not contravene the proviso to sub-section (2) of Section 95.

(4) Where any resolution under this Section has taken effect for a particular year, no proposal to alter the rates or the date fixed in such resolution so far as that year si concerned shall be taken into consideration by the Council without the sanction of or a direction from Our Government

The Property Tax.

95. (1) The property tax, which shall be levied at a consolidated rate on all buildings and lands within the City save those exempted by or under this Act or any other law for the time being in force, shall comprise—

The consolidated property tax.

(*a*) a water and drainage tax for the purpose of defraying the expenses connected with the water and drainage system ;

(*b*) a lighting tax for the purpose of defraying the expenses connected with the lighting of the City ;

(*c*) a tax on buildings and lands ; and

(*d*) a general sanitary tax.

(2) Subject to the provisions of Section 98, the taxes described in sub-section (1) shall be levied at rates fixed at percentages of the annual value of lands and buildings, such rates being determined by the Council :

Provided that such rates shall not be below the percentages mentioned hereunder namely :—

for water and drainage tax, five per cent. of the annual value ;
for lighting tax, one per cent. of the annual value ;
for building and land tax, three per cent. of the annual value ; and
for general sanitary tax, one per cent. of the annual value.

[Provided further that the aggregate of the percentages so fixed shall not exceed 15 per cent, of the annual value.]

(3) For the purpose of assessing the property tax the annual value of any building or land shall be determined by the Commissioner.

96. (1) Every building shall be assessed together with its site and other adjacent premises occupied as appurtenances thereto unless the owner of the building is a different person from the owner of such site, or premises.

Method of assessment of property tax.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may [at the time of assesment] reasonably be expected to let from month to month or from year to year, less a deduction of ten per centum of such annual rent and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever :

Provided that—

(*a*) in the case of—

(i) any Government building, or

(ii) any building of a class not ordinarily let,

the gross annual rent of which cannot, in the opinion of the Council be estimated, the annual value of the premises shall be deemed to be six per centum of the total of the estimated value of the land [at the

time of assessment] and the estimated cost of erecting the building [at such time] after deducting for deprecations a reasonable amount which shall in no case be less than ten per centum of such cost; and

(b) machinery and furniture shall be excluded from valuations; under this Section :

[Provided further that where the annual value of any land or building is attributable partly to the use of such land or building or any portion thereof for the display of any advertisment or advertisements and tax is levied under this Act in respect of such advertisement or advertisements the annual value of such land or building for the purpose of assessing the property tax thereon shall be ascertained as if such land, building or portion is not used for the display of such advertisement or advertisements.]

General exemption.

97. The following buildings and lands shall be exempt from the property tax:—

(a) [places] set apart for public worship and either actually so used or used for no other purpose ;

["(b) choultries for the occupation of which no rent is charged and choultries the rent charged for the occupation of which is used exclusively for charitable purposes ;

(c) places used for the charitable purpose of sheltering the destitute or animals and orphanages, homes and schools for the deaf and dumb, asylum for the aged and fallen women and such similar institutions run purely on philanthropic lines as are approved by the Council;

(d) such ancient monuments protected under the Travancore Ancient Monuments Preservation Act or parts thereof as are not used as residential quarters or public offices."]

(e) buildings and lands declared by Our Government to be palaces or palace grounds ;

[(f) charitable hospitals and dispensaries, but not including residential quarters attached thereto]

(g) burial and burning grounds included in the list published by the Commissioner under Section 337 (3) of this Act.

(h) all such property of Our Government not being buildings as may from time to time be notified by Our Government : and

(i) any building or land the annual value whereof is less than twelve rupees and the owner [*whereof owns*] no other building or land assessed to the property tax.

Special exemption and alternative base of property tax.

98. The Council shall levy the property tax at a uniform rate :

Provided that—

(*a*) the Council may, with the sanction of Our Government exempt any local area from the whole or a proportion of the water and drainage tax or of the lighting tax on the ground that such areas are not deriving benefit from the water supply or drainage or from the lighting system ; and

(*b*) the Council may, with the sanction of Our Government exempt either by bye laws or by a general resolution any building or land from the property tax.

Property tax a first charge on property and movables.

99. The property tax on buildings and lands shall, subject to the prior payment of the land revenue, if any, due to Our Government thereon, be a first charge upon the said buildings or lands and upon the movable property, if any, found within or upon such buildings or lands and belonging to the person liable to [the payment of] such tax.

Payment of property tax in half-yearly instalments.

100. The property tax shall be paid by the owner of the assessed premises in two equal half-yearly instalments, each instalment being payable, save as otherwise expressly provided in Schedule II, within fifteen days after the commencement of the half-year to which it relates :

Provided that on default of payment by the owner, the tax may be recovered from the occupier of the assessed premises in the same manner as it may be recovered from the owner ; and

Provided further that for any sum paid by or recovered from the occupier under this Section, he shall be entitled to credit in account with the owner.

Vacancy remission.

[101. (1) When any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for thirty or more consecutive days in any half-year, the Commissioner shall remit so much, not exceeding one-half of such portion of the tax as relates to the building only as is proportionate to the number of days during which the building was vacant and unlet in the half—year.

(2) Every claim for remission under sub-section (1) shall be made during the half-year in respect of which the remission is sought or in the following half-year and not afterwards.

(3) (*a*) No claim for such remission shall be entertained unless the owner of the building or his agent has previously thereto delivered a notice to the Commissioner—

(i) that the building is vacant and unlet; or

(ii) that the building will be vacant and unlet from a specified date either in the half-year in which notice is delivered or in the succeeding half-year.

(*b*) The period in respect of which the remission is made shall be calculated—

(i) if remission is sought in respect of the half-year in which notice is delivered, from the date of delivery of the notice or from the date on which the building became vacant and unlet, whichever is later; and

(ii) if remission is sought in respect of the half-year succeeding that in which the notice is delivered, from the commencement of the half-year in respect of which remission is sought or from the date on which the building became vacant and unlet, which ever is later.

(*c*) Every notice under clause (*a*) shall expire with the half-year succeeding that during which it is so delivered, and shall have no effect thereafter."]

Obligation of transferor and transfered to give notice of transfer

102. (1) Whenever the title of any person primarily liable to the payment of the property tax on any premises to or over such premises is transferred, the person whose title is transferred and the person to whom the same [is] transferred shall within three months after the execution of the instrument of transfer or after its registration if it be registered or after the transfer is effected, if no instrument be effected, give notice of such transfer to the Commissioner.

(2) In the event of the death of any person primarily liable as aforesaid, the person to whom the title of the deceased shall be transferred as heir or otherwise shall give notice of such transfer to the Commissioner within one year from the death of the deceased.

(3) The notice to be given under this Section shall be in such form as the Commissioner may direct and the transferee or the person to whom the title passes, as the case may be, shall, if so required, be bound to produce before the Commissioner any documents evidencing the transfer or succession.

(4) Every person who makes a transfer as aforesaid without giving such notice to the Commissioner shall [in addition to any other liability which he may incur through such neglect] continue liable for the payment of the property tax assessed on the premises transferred until he gives notice or until the transfer shall have been recorded in the Municipal registers, but nothing in this Section shall be held to affect,—

(*a*) the liability of the transferee for the payment of the said tax, or

(*b*) the prior claim of the Corporation under Section 99.

[103. (1) (*a*) If any building in the City is constructed or reconstructed, the owner shall give notice thereof to the Commissioner within fifteen days from the date of completion or occupation of the building whichever is earlier.

Owner's obligation to give notice of construction or reconstruction or demolition of building.

(*b*) If such date falls within the last two months of a half-year, the owner shall, subject to notice being given under clause (*a*), be entitled to a remission of the whole of the tax or enhanced tax, as the case may be, payable in respect of the building only, for that half-year.

(*c*) If such date falls within the first four months of a half-year, the owner shall, subject to notice being given under clause (*a*), be entitled to a remission of so much, not exceeding a half, of the tax or enhanced tax as the case may be, payable in respect of the building only, for that half-year as is proportionate to the number of days in that half-year preceding such date.

(2) (*a*) If any building in the City is demolished or destroyed the owner shall, until notice thereof is given to the Commissioner, be liable for the payment of the property tax for which he would have been liable had the building not been demolished or destroyed.

(*b*) If such notice is given within the first two months of a half-year the owner shall be entitled to a remission of the whole of the tax payable in respect of the building only, for that half-year.

(*c*) If such notice is given within the last four months of a half-year, the owner shall be entitled to a remission of so much, not exceeding a half of the tax payable in respect of the building only, for that half-year as is proportionate to the number of days in that half-year succeeding the demolition or destruction as the case may be.',

[104. The Commissioner may at his discretion condone omissions to give notice under Sections 101, 102 or 103].

Power of Commissioner to condone omission to give notice.

105. (1) For the purpose of assessing the property tax, the Commissioner may by notice, call on the owner or occupier of any building or land to furnish him, [within thirty days after the service of the notice where the notice is served upon Our Government or a company and within fourteen days after such service in other cases] with returns of the rent payable for the building or land, the cost of erecting the building and the measurements of the land [and with such other information as the Commissioner may require]

Commissioner's power to call for information and to enter upon premises

and every owner, or occupier upon whom any such notice is served shall be bound to comply with it and to make a true return to the best of his knowledge or belief.

(2) For the purpose aforesaid the Commissioner may enter, inspect, survey and measure any building or land, after giving twenty-four hours notice to the owner or occupier.

Tax on Companies.

Taxation of companies trading for sixty days in half-year on their capital.

[106. Every company which transacts business within the city in any half-year for not less than 60 days in the aggregate shall pay in addition to any licence fee that may be leviable under this Act a half-yearly tax assessed in accordance with the rules in Schedule II, but in no case exceeding Rs. 1000.]

Profession Tax.

Licence, tax on profession, arts, trades callings and appointment.

107. (1) Every person not liable to the tax on Companies who, in any half year—

(*a*) exercises a profession, art or calling or transacts business or holds any appointment, public or private,—

(i) within the city for not less than 60 days in the aggregate, or

(ii) outside the city, but who resides in the city for not less than 60 days in the aggregate ; or

(*b*) resides in the city for not less than 60 days in the aggregate and is in receipt of any pension or income from investments ;

shall pay in addition to any licence fee that may be leviable under this Act a half-yearly tax assessed in accordance with the rules in Schedule II, but in no case exceeding rupees two hundred and fifty.

Explanation. A person shall be deemed to have exercised a profession, art or calling or held an appointment within the City if the person has an office or place of employment within the City,

(2) A person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in sub-section (1) as being liable to the tax.

(3) No person who shall prove that he has paid the sum due on account of the profession tax levied under any law for the time being in force relating to Municipalities for the same half-year in any other Municipality in Travancore shall be liable by reason merely of change of business, appointment, residence or place of business to pay more than the difference between such sum and the amount to which he is otherwise liable for the profession tax for the half-year under this Act.

108. The profession tax leviable from a firm, association or undivided family may be levied from any adult member or agent of that firm or association or manager or agent of the family as the case may be.

Lihility of member of firm, association or undivided Hindu family for profession tax.

Provisions common to Companies and Profession Tax.

109. (1) The expression "transacts business" in Sections 106 and 107 shall be deemed to include the doing of acts or business of whatever nature whether isolated or not such as soliciting, obtaining or transmitting orders or buying, making, manufacturing, exporting, importing, receiving, transmitting or otherwise dealing with goods;

Payment when due and notice to pay

(2) Where for the purpose of transacting business within the City, a company or a person has an office or an agent or firm to represent it or him, the company or person shall be deemed to transact business within the City whether or not such office, agent or firm has power to make binding contracts on behalf of the company or person; and the person in charge of such office or the agent or firm as the case may be shall be liable for the tax payable by the company or person.

(3) A company otherwise liable to the tax on companies under Section 106 or a person otherwise liable to profession tax under Section 107 shall not cease to be liable to such tax by reason only of its or his head office or the place from which its or his business is controlled being situated outside the City or by reason only of the fact that its or his transactions are closed outside the City.

(4) If the companies' tax or profession tax due from any company or person in respect of any half-year is not paid, the Commissioner shall cause a notice to be served on such company or person to pay such tax within 15 days of the date of such service.

110. The Commissioner may by notice require the owner or occupier of any building or land and every secretary or manager of a hotel, boarding or lodging house, club or residential chambers to furnish within a specified time a list in writing containing the names of all persons occupying [such building, land, hotel boarding or lodging house, club or residential chambers] and specifying the profession, art, trade or calling, or appointment of every such person and the rent, if any, paid by him.

Requisition on owner or occupier to furnish list of persons liable to tax.

111. The Commissioner may by notice require any employer [or his agent] or the head or secretary or manager of any public or private office, hostel, boarding house or club, or of a firm, association or company—

Requisition on employers or their representatives to furnish list of persons liable to tax.

(*a*) to furnish within a specified time a list in writing of the names of all persons employed by such employer or by such office, hotel, boarding house or club, firm or company as officers, servants, *dubashes*, agents, suppliers or contractors with a statement of the salary or income of each of such employed persons ; and

(*b*) to furnish particulars in regard to any company of which such employer, head, secretary or manager, as the the case may be, is the agent.

Statements, returns, etc., to be confidential.

[112. All statements made, returns furnished, or accounts or documents produced in connection with the assessment of companies or profession tax by any company or person shall be treated as confidential and copies thereof shall not be granted to the public.]

Tax on Carriages and Animals.

General provisions regarding tax on carriages and animals.

113. (1) The tax on carriages and animals shall be levied half-yearly on carriages and animals kept within the City which are of the kinds specified in Part III of Schedule II.

(2) The rates of the tax shall be determined by the Council, provided always that they shall not exceed the maxima laid down in Part III of Schedule II.

Liability to tax according to period for which carriage or animal has been kept.

114. (1) Every person having possession, custody or control of any taxable carriage or animal shall be liable for the full half-yearly tax if the carriage or animal has been kept within the City for an aggregate period of not less than sixty days in the half-year :

(2) If such aggregate period exceeds fifteen days but is less than sixty days a moiety only of the half-yearly tax shall be leviable.

[(3) If such aggregate period does not exceed fifteen days, no tax shall be leviable for the half-year].

(4) Every person having possession, custody or control of any taxable carriage or animal witin the city shall, untill the contrary is shown be presumed to have kept the same with in the City for sixty days in the half-year.

(5) Notwithstanding anything contained in sub-section (1), no person shall be liable to taxation during any half-year on account of any carriage or animal in respect of which the full tax for the same half-year has already been paid by some other person.

Exception. 115. The carriage and animal tax shall not be levied on—

(a) carriages and animals belonging to Our Government or declared by Our Government as belonging to the Palaces or the Residency;

(b) carriages and animals belonging to the Corporation;

(c) carriages and animals kept solely for sale by carriage makers and dealers;

(d) carriages which have been under repair or standing at a carriage-maker's during the whole of the half-year; and

(e) animals which during the whole of the half-year have been kept in any institution for the reception of infirm or disabled animals or which are certified by a veterinary surgeon to have been unfit for use during the whole of the half year.

Composition. 116. With the sanction of the Standing Committee or in accordance with regulations framed by that body, the Commissioner may compound, for any period not exceeding one year, with any livery stablekeeper or other person keeping carriages and animals for the sale or hire, for a certain sum to be paid in lieu of the carriage and animal tax.

Requisition on occupier to furnish statements of persons liable to tax. 117. (1) The Commissioner may by notice require the occupier of any premises to furnish him with a statement—

(a) showing the name and address of every person who has possession, custody or control of any carriage or animal which is kept in such premises and liable to [payment] of the carriage and animal tax; and

(b) containing a description of every such carriage or animal.

(2) The occupier shall sign the statement and transmit it to the Municipal office within one week from the date of his receipt of the notice.

Forms to be sent to and returned by tax payers. [118. (1) The Commissioner shall send to every person supposed to have become liable to the payment of the tax on carriages and animals a printed table to be filled up with such information respecting the carriages and animals kept by him as the Commissioner considers necessary for the assessment of the tax.

(2) Such table shall be filled up with such information in writing, signed and dated and returned within one week of its receipt to the Municipal office by the person to whom it has been sent.

(3) On the expiry of the period of one week referred to in sub-section (2) the Commissioner shall cause a notice to be served on such

person requiring him to pay within fifteen days of the date of such service the sum for which in the opinion of the Commissioner such person is liable on account of the tax on carriages and animals.]

Grant of licence on payment of tax.

119. When any person pays the amount of tax due in respect of any carriage or animal the Commissioner shall grant him a licence to keep such carriage or animal for the period to which the payment relates.

Power to require numbers to be affixed to bicycles, etc.

120. (1) The Commissioner may direct that a Municipal number shall be affixed—

(a) to every carriage let out for hire within the City, and

(b) to every bicycle and tricycle kept within the City:

Provided that no Municipal number shall be requisite in the case of carriages to which the Travancore Motor Vehicles Act, VI of 1094, or the Hackney Carriage Act, VI of 1089, is applicable.

(2) The numbers affixed under sub-section (1) shall be registered in the Municipal office.

Obligation of Inspector General of Police to satisfy himself of payment of Municipal tax on hackney carriage before registering it.

121. Before registering any hackney carriage under the Hackney Carriage Act, VI of 1089, the Inspector-General of Police shall satisfy himself that the Corporation has received payment of the tax, if any, due under Section 113 on account of the last preceding half-year and the current half-year.

Tax on Carts.

Registration of cart

122. (1) Every owner of a cart kept or let out for hire within the city shall register it at the Municipal office once in each half-year.

Fee for registration.

(2) Such tax not exceeding two rupees as the Standing Committee may fix shall be paid on each registration under sub-section (1):

Provided that in the case of a cart on account of which tax has already been paid by a previous owner no further tax shall be payable in respect of a subsequent registration during the same half-year.

[Provided further that in the case of single bullock carts the tax shall not exceed one rupee half-yearly.]

Affixing number on cart.

(3) The Commissioner may direct that a Municipal number shall be affixed to every registered cart.

Notification of days of registration.

(4) The Commissioner shall notify certain days in every half-year for the registration and numbering of carts and the payment of the tax.

(5) All registrations made and numbers affixed under this Section shall be entered in a book to be kept for the purpose at the Municipal office.

Entry of registration in book.

(6) Such book shall be open to the inspection of any tax-payer at all reasonable times without charge.

Inspection of register.

Exemption.

123. Nothing in Section 122 shall apply to —

(*a*) carts or waggons or other such property of Our Government; [or the Corporation or declared by Our Government as belonging to the Palaces or the Residency] and;

(*b*) carts kept solely for sale by cart-makers and dealers.

124. The Commissioner may remit the whole or a portion of the cart-tax in respect of any cart which is shown to his satisfaction to have been kept or let out for hire within the City for an aggregate period not exceeding fifteen days in the half-year or to have been under repair or standing at a cart-maker's during the whole of the half-year.

Power to remit tax on cart kept for less than fifteen days or not used.

Power to seize Carriages and Carts not bearing numbers.

125. If a Municipal number is not affixed to a carriage or cart in pursuance of a direction issued under Section 120 or Section 122, as the case may be, the Commissioner may at any time seize and detain the vehicle and the animal, if any, by which it is drawn:

Seizure of vehicles not bearing numbers.

Provided that no vehicle other than a bicycle, tricycle, motor-bicycle or rickshaw shall be seized or detained when actually employed in the conveyance of any passenger or goods.

126. (1) If a vehicle or animal is detained under Section 125 and the owner or other person entitled thereto does not claim the same and pay the tax, if any, due thereon within [fifteen] days from the date of seizure, the Commissioner may direct that the vehicle or animal shall be sold in public auction and the proceeds of the sale applied to the payment of—

Procedure after seizure.

(i) the tax, if any, due on the vehicle or animal sold;

(ii) such penalty not exceeding the amount of the tax as the Commissioner may direct; and

(iii) the charges incurred in connection with the seizure, detention and sale.

(2) If there is a surplus after such payment, the Commissioner shall, on demand made within [one year] from date of sale, make it over to the owner or other person entitled thereto. If no such demand is made, such surplus shall be forfeited to the Corporation.

(3) If the owner of the vehicle or animal or other person entitled thereto claims the same within ten days from the date of seizure or at any time before the sale, it shall be returned to him on payment of—

(i) the tax due thereon;

(ii) such penalty not exceeding the amount of the tax as the Commissioner may direct; and

(iii) the charges incurred in connection with the seizure and detention.

Tax on Advertisements.

Tax on advertisements.

[127. Every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure any advertisement or who displays any advertisement to public view in any manner whatsoever in any place whether public or private shall pay on every advertisement which is so erected, exhibited, fixed, retained or displayed to public view a tax calculated at such rates and in such manner and subject to such exemptions as the council may, with the approval of Our Government by resolution determine:

Provided always that the rates shall be subject to the maxima and minima laid down by Our Government in this behalf:

Provided also that no tax shall be levied under this section on any advertisement or a notice—

(*a*) of a public meeting, or

(*b*) of an election to any legislative body or the Corporation of Trivandrum, or

(*c*) of a candidature in respect of such an election:

Provided further that no such tax shall be levied on any advertisement which is not a sky-sign and which

(*a*) is exhibited within the window of any building; or

(*b*) relates to the trade or business carried on within the land or building upon or over which such advertisement is exhibited, or to any sale or letting of such land or building or any effects therein or to any sale. entertainment or meeting to be held upon or in the same; or

(*c*) relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or

(*d*) relates to the business of any railway company; or

(*e*) is exhibited within any railway station or upon any wall or other property of a railway company except any portion of the surface of such wall or property fronting any street.

Explanation I. The word 'structure' in this Section shall include any movable board on wheels used as an advertisement or an advertisement medium.

Explanation 2. The expression 'sky-sign' shall, in this Section, mean any advertisement, supported on or attached to any post, pole, standard, frame-work or other support wholly or in part upon or over any land, building, wall or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any public place and includes all and every part of any such post, pole, standard, frame-work or other support. The expression 'sky-sign' shall also include any balloon, parachute or othersimilar device employed wholly or in part for the purposes of any advertisement upon or over any land, building or structure or upon or over any public place but shall not include —

(*a*) any flagstaff, pole, vane or weathercock, unless adapted or used wholly or in part for the purpose of any advertisement; or

(*b*) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof:

Provided that such board, frame or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part ofthe wall, or parapet or ridge to, against or on which it is fixed or supported ; or

(*c*) any advertisement relating to the name of the land or building, upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building ; or

(*d*) any advertisement relating exclusively to the business of a railway company, and placed wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway company and so placed that it cannot fall into any street or public place ; or

(e) any notice of land or buildings to be sold, or let, placed upon such land or buildings.

Explanation 3. 'Public Place' shall, for the purpose of this section, mean any place which is open to the use and enjoyment of the public whether it is actually used or enjoyed by the public or not.

Prohibition of advertisement without written permission of Commissioner.

128. (1) No advertisement shall, after the levy of the tax under Section 127 has been determined upon by the Council, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the city or shall be displayed in any manner whatsoever in any place without the written permission of the Commissioner.

(2) The Commissioner shall not grant such permission if —

(i) the advertisement contravenes any bye-law made by the Council underclause (xxx) of Section 366 ; or

(ii) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of sub-section (2) in the case of an advertisement liable to the advertisement tax, the Commissioner shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission:

Provided that the provisions of this Section shall not apply to any advertisement erected, exhibited, fixed or retained on the premises of a railway company relating to the business of a railway company.

Permission of the Commissioner to become void in certain cases.

129. The permission granted under Section 128 shall become void in the following cases, namely:—

(*a*) if the advertisement contravenes any bye-law made by the council under clause (XXX) of Section 366;

(*b*) if any addition to the advertisement be made except for the purpose of making it secure under the direction of the Corporation Engineer;

(*c*) if any material change be made in the advertisement or any part thereof;

(*d*) if the advertisement or any part thereof falls otherwise than through accident;

(*e*) if any addition or alteration be made to, or in the building, wall or structure upon or over which the advertisement is erected, exhibited, fixed or retained if such addition or alteration involves the disturbance of the advertisement or any part thereof; and

(*f*) if the building, wall or structure upon or over which the advertisement is erected, exhibited, fixed or retained be demolished or destroyed.

Owner or person in occupation to be deemed responsible.

130. Where any advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure in contravention of the provisions of Section 127 or Section 128 or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or become void, the owner or person in occupation of such land, building, wall, hoarding or structure shall be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in such contravention unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

Removal of unauthorised advertisements.

131. If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of Section 127 or Section 128 or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or become void, the commissioner may, by notice in writing, require the owner or occupier of the land, building, wall, hoarding or structure upon or over which the

same is erected, exhibited, fixed or retained to take down or remove such advertisement or may enter any building, land or property and have the advertisement removed.

Collection of tax on advertisements.

132. The Commissioner may farm out the collection of any tax on advertisements leviable under Section 127 for any period not exceeding one year at a time on such terms and conditions as may be provided for by bye-laws made under Section 366."

Tax on Entertainments.

Tax on Entertainments.

133. Every person who conducts, holds or manages any entertainment in any place within the city shall, in accordance with rules framed in that behalf by Our Government, pay on every such entertainment a tax calculated at such rates and in such manner as the council may with the approval of Our Government by resolution determine :—

Provided always that the rates shall be subject to the maxima and minima laid down by Our Government in this behalf;

Provided further that the entertainment tax shall not be levied in the case of an entertainment;

(*a*) which is of a wholly educational character;

(*b*) which is provided partly for educational or scientific purposes by a society not established for profit;

(*c*) which is provided by a society established solely for the purpose of promoting public health or the interest of agriculture or a manufacturing industry and not conducted for profit and which entertainment consists solely of an exhibition of articles which are of material interest in connection with questions relating to public health or agriculture or of the product of the industry for promoting the interests of which the society exists or of the materials, machinery, appliances or food stuffs used in the production of these products; or

(*d*) the whole of the net proceeds of which is devoted to philanthropic or religious or charitable purposes.

Provided also that Our Government may by order exempt any class of entertainments from liability to entertainment tax and may in consultation with or at the instance of the Council by special order exempt any particular entertainment from tax.

Explanation. Entertainment includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment.

134. No entertainment shall after the levy of the tax under Section 133 has been determined upon by the Council be held, conducted or performed in any place within the city without the written consent of the commissioner.]

Prohibition of entertainment without permission.

Tolls.

Levy of tolls.

135. The Corporation may levy tolls as specified in Part IV of Schedule II on any vehicle or animal entering the City :

Provided that no toll shall be levied on any vehicle or animal—

(*a*) licensed or registered by the Corporation, or

(*b*) belonging to Our Government, or the Corporation, or declared by Our Government as belonging to the Palace or the Residency, or

(*c*) exempted by a notification in Our Government Gazette.

Construction of toll-bars and collection of tolls.

136. The Commissioner may construct toll-bars and toll stations and—

(*a*) may place the collection of the tolls under the management of such persons as he thinks fit ; or

(*b*) may, subject to regulations, if any, made by the Standing Committee, farm them out on such terms and conditions as may be necessary with liberty to the farmer to exercise all or any of the powers conferred by or under this Act for the levy and collection of tolls ; and

(*c*) may with the sanction of the Standing Committee or in accordance with regulations framed by that body, compound with any person living outside the City for a certain sum to be paid yearly or half-yearly in lieu of all tolls payable under the provisions of this Act.

Procedure on non-payment of toll.

137. (1) If the toll leviable on a vehicle or animal is not paid on demand, the person appointed to collect the toll may seize and detain such portion of the appurtenances or load of such vehicle or animal as will, in his opinion, suffice to defray the amount due ; in the absence of any such appurtenances or load or in the event of their value being insufficient to defray the amount due, he may seize and detain the vehicle or animal.

(2) All property seized under sub-section (1) shall be sent within twenty-four hours to the Commissioner or to such person as he may have authorised to receive and sell such property and the Commissioner shall forthwith give public notice that after the expiry of two days, exclusive of Sunday, from the date of notice the property will be sold in auction at a place to be specified in the notice.

(3) If at any time before the sale has begun, the amount due on account of the toll, together with all expenses incidental to the seizure

and detention, is tendered to the Commissioner or other person authorised as aforesaid, the property seized shall be forthwith released.'

(4) If no such tender is made, the property shall be sold and the proceeds of the sale applied to the payment of—

(i) the amount due on account of the toll,

(ii) such penalty not exceeding the amount of the toll as the Commissioner may direct, and

(iii) the charges incurred in connection with the seizure, detention and sale.

(5) If there is a surplus after such payment, the Commissioner shall, on demand made within six months from the date of sales make it over to the owner or other person entitled thereto. If no such demand is made, such surplus shall be forfeited to the Corporation.

Attempts to evade payment of tolls.

138. No person shall with intent to evade payment of toll cause a vehicle or animal—

(*a*) to pass a toll station without stopping if he is required by the toll-keeper to stop; or

(*b*) to leave a street on which a toll-station has been placed and pass over any adjacent land, not being either a public street or land of which such person is the owner or occupier.

Table of tolls.

139. At every toll-station a table of the tolls leviable shall be put up legibly written or painted in English and in Malayalam in some conspicuous place near such toll-station.

General provisions.

Power to exempt from taxes.

[140. With the sanction of Our Government the Council may exempt any person or class of persons wholly or in part from the payment of any tax.

Power to assess in case of escape from assessment.

141. Notwithstanding anything to the contrary contained in this Act or the rules made thereunder, if for any reason any person liable to pay any of the taxes or fees leviable under this Chapter has escaped assessment in any half-year or year the Commissioner may, at any time within three years from the date on which such person should have been assessed, serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this Act and the rules made thereunder shall so far as may be apply as if the assessment was made in the half-year or year to which the tax or fee relates.

Rules and tables in Schedule II.

142. The rules and tables embodied in Schedule II shall be read as part of this chapter.]

CHAPTER VI—FINANCE.

The Municipal Fund.

Definition of Municipal Fund.

143. All moneys received by the corporation shall constitute a fund which shall be called the Municipal Fund and shall be applied and disposed of in accordance with the provisions of this Act.

Audit of Accounts.

144. Our Government shall appoint auditors of the accounts of receipts and expenditure of the Municipal Fund. Such auditors shall be deemed to be 'public servants' within the meaning of Section 15 of the Travancore Penal Code.

Financial Rules.

145. With regard to the deposit, investment and expenditure of the Municipal Fund and the audit of the Municipal accounts the rules in ScheduleIII shall be observed.

Contributions to expenditure by the Government or a municipality.

[146. (1) If the expenditure incurred by Our Government or by any municipal authority in Travancore for any purpose authorised by or under Schedule III is such as to benefit the inhabitants of the city the council may make a contribution towards such expenditure.

(2) Our Government may direct the council to show cause within a period fixed by Our Government in this behalf and not being less than one month after receipt of the order containing the direction why any contribution described in sub-section (1) should not be made.

(3) If the Council fail to show cause within the said period to the satisfaction of Our Government, Our Government may direct it to make such contribution as they shall name and it shall be paid accordingly.]

Loans.

Power of Corporation to borrow money.

147 (1) The Council may, in pursuance of any resolution passed at a special meeting, borrow by way of debenture or otherwise on the security of all or any of the taxes, duties, tolls, fees and dues authorised by or under this Act, any sums of money which may be required :

(*a*) for the construction of works, or

(*b*) for the acquisition of [*lands and buildings*] or

(*c*) for slum clearance and construction of tenements

(*d*) to pay off any debt due to Our Government, or

(*e*) to repay a loan previously raised under this Act or other Act previously in force :

Provided that

(i) no loan shall be raised without the previous sanction of Our Government; and

[(ii) the amount of the loan,] the rate of interest and the terms as to the time and method of repayment and the like shall be subject to the approval of Our Government.

(2) When any sum of money has been borrowed under sub-section (1),—

(a) no portion thereof shall without the previous sanction of Our Government be applied to any purpose, other than that for which it was borrowed, and

(b) no portion of any sum of money borrowed under sub-section (1), clause (a), shall be applied to the payment of salaries or allowances to any Municipal officers or servants other than those exclusively employed upon the works for the construction of which the money was borrowed.

Time for repayment of money borrowed under Section 147.

148. The time for the repayment of any money borrowed under Section 147 shall in no case exceed sixty years, and the time for repayment of any money borrowed for the purpose of discharging any previous loan shall not, except with the express sanction of Our Government, extend beyond the unexpired portion of the period for which such previous loan was sanctioned.

Limit of borrowing powers

149. Notwithstanding anything hereinbefore contained, the borrowing powers of the Corporation shall be limited so that the sum payable annually for interest and for the maintenance of the sinking funds as hereinafter provided, and for interest and repayment of any sums borrowed otherwise shall not, except with the express sanction of Our Government, exceed twelve and a half per cent. of the annual value of buildings and lands as determined under Chapter V.

Form and effect of debentures.

150. All debentures issued under this Chapter shall be in such form as the Council, with the previous sanction of Our Government, may determine, and shall be transferable in such manner as shall be therein expressed: and the right to sue in respect of the moneys secured by any of such debentures shall vest in the holders thereof for the time being without any preference by reason of some such debentures being prior in date to others.

Payment to survivors of joint payees.

151. When any debenture or security issued under this Act is payable to two or more persons jointly, and either or any of them dies, the debenture or security shall be payable to the survivor or survivors of such persons:

Provided that nothing in this Section shall affect any claim by the representative of a deceased person against such survivor or survivors.

152. When two or more persons are joint holders of any debenture or security issued under this Act, any one of such persons may give an effectual receipt for any interest or dividend payable in respect of such debenture or security, unless notice to the contrary has been given to the Corporation by any other of such persons.

Receipt by joint holder for interest or dividend.

153. (1) The Corporation shall maintain sinking funds for the repayment of money borrowed on debentures issued and shall pay by half-yearly instalments into such sinking funds such sum as will be sufficient for the repayment within the period fixed for the loan of ll moneys borrowed on debentures issued.

Maintenance and investment of sinking funds.

(2) All moneys paid into the sinking funds shall, as soon as possible, be invested under the orders of the Council in securities approved by Our Government and shall be invested in the joint names of the Chief Secretary to Our Government and the Accountant General to be held by them as trustees for the purpose of repaying at due date the debentures issued by the Corporation.

(3) All dividends and other sums received in respect of any such investment shall, as soon as possible after receipt, be paid into the sinking funds and invested in the manner laid down in sub-section (2).

(4) Any investment made under this Section may, subject to the provisions of sub section (2), be varied or transposed.

154. The aforesaid trustees may apply a sinking fund or any part thereof, in or towards the discharge of the loan or part of a loan for which such fund was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose:

Application of sinking fund.

Provided that when any loans or parts thereof have been consolidated under Section 156, the trustees shall transfer to the sinking fund of the consolidated loan so created such part of the sinking funds of the original loans as may be proportionate to the amount of the sinking funds of the original loans incorporated in the consolidated loan.

Annual statement by trustees.

155. (1) The aforesaid trustees shall, at the end of every year, submit to the Corporation a statement showing.

(*a*) the amount which has been invested during the year under Section 153.

(*b*) the date of the last investment made previous to the submission of the statement.

(*c*) the aggregate amount of the securities then in their hands, and

(*d*) the aggregate amount which has up to the date of the statement been applied under Section 154 in or towards discharging loans.

(2) Every such statement shall be laid before the Council and published.

Power of Corporation to consolidate loans.

156. (1) Notwithstanding anything to the contrary contained in this Chapter, the Corporation may consolidate all or any of their loans and for that purpose may invite tenders for a new loan (to be called the 'Municipal consolidated loans' of the year..........) and invite the holders of Municipal debentures to exchange their debentures for scrip of such loan.

(2) The terms of any such consolidated loan and the form of its scrip and the rates at which exchange into such consolidated loan shall be permitted shall be subject to the prior approval of Our Government.

(3) The period for the extinction of any such consolidated loan shall not, without the sanction of Our Government, extend beyond the farthest date within which any of the loans to be consolidated would be otherwise repayable.

(4) The Corporation shall provide for the repayment of any such consolidated loan by a sinking fund in the manner laid down in Section 153 having regard to the amount transferred to such sinking fund under Section 154.

Priority of payments for interest and repayment of loans over other payments.

157. All payments due from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation.

Attachment of Municipal Fund for recovery of money borrowed from Government.

158. (1) If any money borrowed by the Corporation from Our Government, whether before or after the commencement of this Act, or any interest or costs due in respect thereof, be not repaid according to the conditions of the loan, Our Government may attach the Municipal Fund or any part thereof.

(2) After such attachment, no person except an officer appointed in this behalf by Our Government shall in any way deal with the attached fund; but such officer may do all acts in respect thereof which any Municipal authority, officer or servant might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the arrears and of all interest and costs due in respect thereof and of all expenses caused by the attachment and subsequent proceedings:

Provided that no such attachment shall defeat or prejudice any debt for which the fund attached was previously charged in accordance with law: but all such prior charges shall be paid out of the proceeds of the fund before any part of the proceeds is applied to the satisfaction of the debt due to Our Government.

Budget.

Estimates of income and expenditure to be prepared annually by the Commissioner

159. The Commissioner shall, on or before the tenth day of Medom each year, prepare and submit to the Standing Committee [on taxation and finance] a budget containing a detailed estimate of income and of expenditure for the ensuing year, and, if it is in his opinion necessary or expedient to vary taxation, or to raise loans, shall submit his proposals in regard thereto.

Budget estimate to be prepared by the Standing Committee.

[160 (1) The Standing Committee on taxation and finance shall on or as soon as may be after the tenth day of Medom, consider the estimates and proposals of the Commissioner and, after having obtained the proposals, if any, of other Standing Committees and such further detailed information, if any, as it shall think fit to require from the Commissioner, and having regard to all the requirements of this Act, shall frame therefrom, subject to such modifications and additions therein or thereto as it shall think fit, a budget estimate of the income and expenditure of the Corporation for the next year.]

(2) In such budget estimate, the Standing Committee shall —

(*a*) provide for the payment, as they fall due, of all instalments of principal and interest for which the corporation may be liable on account of loans; and

(*b*) allow fora cash balance at the end of the year of not less than ten thousand rupees.

(3) The Commissioner shall cause the budget estimate, as finally approved by the Standing Committee, to be printed and shall, not later than the fifteenth day of Edavom, forward a printed copy thereof to each councillor.

Consideration of budget estimate by the Council.

161. At a meeting of the Council which shall be called for some day in Mithunom, the budget estimate prepared by the Standing Committee shall be laid before the Council.

Procedure of Council.

162. The Council may refer the budget estimate back to the Standing Committee for further consideration and re-submission within a specified time, or adopt the budget estimate or any revised budget estimate submitted to it, either as it stands, or subject to such alteration as it deems expedient:

Provided that the budget estimate finally adopted by the Council shall make adequate and suitable provision for each of the matters referred to in clauses (*a*) and (*b*) of Section 160, sub-section (2).

163. The Council shall finally pass the budget estimate before the beginning of the year to which it relates and forthwith submit a copy thereof Our Government.

Obligation to pass budget before the beginning of the year.

164 The Council may, on the recommendation of the Standing Committee, from time to time during any year pass a supplemental budget estimate for the purpose of meeting any special or unforeseen requirement arising during that year, but not so that the estimated cash balance at the close of the year shall be reduced below ten thousand rupees.

Council may pass supplemental budget.

Reduction or transfer of budget grants.

165. (1) The Standing Committee may, if it thinks necessary, at any time during the year—

(*a*) reduce the amount of a budget grant ; or

(*b*) transfer and add the amount, or a portion of the amount, of one budget grant to the amount of any other budget grant :

Provided that—

(i) due regard shall be had, when making any such reduction or transfer, to all the requirements of this Act ;

(ii) the aggregate sum of the budget grants contained in the budget estimate adopted by the Council shall not be increased except by the Council under Section 164 ; and

(iii) every such reduction or transfer shall be brought to the notice of the Council at its next meeting.

(2) If any such reduction or transfer is of an amount exceeding one hundred rupees, the Council may pass with regard thereto such order as it thinks fit, and it shall be incumbent on the Standing Committee and the Commissioner to give effect to the said order.

166. (1) If it shall at any time during any year appear to the Council, upon the representation of the Standing Committee, that, notwithstanding any reduction of budget grants that may have been made under Section 165, the income of the Municipal Fund during the said year will not suffice to meet the expenditure sanctioned in the budget estimate of the said year and to leave at the close of the year a cash balance of not less than ten thousand rupees, it shall be incumbent on the Council either to diminish the sanctioned expenditure of the year, so far as it may be possible so to do with due regard to all the requirements of this Act or to have recourse to supplementary taxation, or to adopt

Re-adjustment of income and expenditure to be made by the Corporation during the course of the official year whenever necessary.

both of these expedients in such measure as may be necessary to secure an estimated cash balance of not less than ten thousand rupees at the close of the year.

(2) Whenever the Council determines to have recourse to supplementary taxation in any year, it shall do so by increasing for the unexpired portion of the year the rate at which any tax or duty is being levied, subject to the conditions, limitations and restrictions laid down in Chapter V.

PART IV.

PUBLIC HEALTH, SAFETY AND CONVENIENCE.

CHAPTER VII—WATER SUPPLY, LIGHTING AND DRAINAGE.

Public Water supply.

Vesting of works in Corporation.

167. All public reservoirs, tanks, cisterns, fountains, wells, pumps, pipes, taps, conduits, aqueducts and other works (not vested in Our Government) connected with the supply of water to the City whether made at the cost of the Corporation or otherwise and all bridges, buildings, engines, works, materials, and other things connected therewith and all land (not being private property or property vested in Our Government) adjacent and appertaining to the same, shall vest in the [Corporation and be subject to its control.]

Construction of water works

168. Our Government, or the Corporation with the sanction of Our Government may, construct, lay, or erect filtering tanks, reservoirs, engines, conduits, pipes, or other works within or without the limits of the City for supplying it with water, and may provide tanks, reservoirs, engines, mains, fountains and other conveniences within the said limits for the use of the inhabitants.

Provision of gratuitous supply of drinking water

169. (1) Our Government or the Corporation may provide a supply of drinking water within the City and may erect stand pipes, fountains or other convenience for the gratuitous supply of water.

(2) Any water supply system constructed by and vesting in Our Government may, on such terms as may be settled by Our Government and the Municipal Council, be handed over to the Municipal Council for its being worked out and so long as the arrangement lasts, the water supply shall for the purposes of this Chapter be deemed a Municipal water supply.

(3) Notwithstanding anything contained in sub-section (2) it shall be lawful for Our Government to work the Government water supply system through their own officers and in such cases an annual contribution of such amount as may be fixed by Our Government after ascertaining the views of the Council shall be paid by the Council to Our Government.

Trespass on Water supply premises.

170. It shall not be lawful for any person except with permission duly obtained to enter on land vested in Our Government or the Corporation along which a conduit or pipe runs or any premises connected with the water-supply.

Prohibition of building over water mains.

171. (1) Without the permission of the Commissioner no building, wall or other structure shall be newly erected and no street shall be constructed over any water mains.

(2) If any building, wall or other structure be so erected or any street be so constructed, the Commissioner may, with the approval of Our Government or the Standing Committee, cause the same to be removed or otherwise dealt with as to him shall appear fit and the expenses thereby incurred shall be paid by the persons offending.

Private Water-supply.

Control over house connections.

172. All house connections, whether within or without the premises to which they belong, with the water supply mains shall, subject to such rules as may be framed by Our Government from time to time, be under the the control of the Corporation, but shall be altered, repaired and kept in proper order, at the expense of the owner of the premises to which they belong, or for the use of which they were constructed, and in conformity with bye-laws made in that behalf.

Private water supply for domestic consumption and use and powers of Commissioner to enforce provision of water supply.

173. (1) The Commissioner may on application by the owner or occupier of any building arrange, in accordance with the rules and bye-laws, to supply water thereto for domestic consumption and use :

Provided that the Commissioner shall not without the sanction of the Standing Committee agree to supply water to any building assessed at an annual value of less than forty-eight rupees.

(2) Whenever it appears to the Commissioner that any dwelling house assessed at an annual value of not less than forty-eight rupees is without a proper supply of water for domestic consumption and use and that such a supply can be furnished from a main not more than one hundred feet distant from any part of such building, the Commissioner

may by notice require the owner to obtain such supply and to execute all such works as may be necessary for that purpose in accordance with the rules and bye-laws.

(3) It shall not be lawful for the owner of any dwelling house assessed at an annual value of not less than forty-eight rupees which may be constructed or reconstructed after the commencement of this Act to occupy it or cause or permit it to be occupied until he has obtained a certificate from the Commissioner that there is provided within or within a reasonable distance of the house such a supply of wholesome water as appears to the Commissioner to be sufficient for domestic consumption and use of the inmates of the house.

(4) The cost of making the connection and the cost or hire of meters shall be borne by the applicant and shall be recoverable in the same manner as the water and drainage tax.

(5) For all water supplied under this Section, in excess of a maximum determined by rules and bye-laws, payment shall be made at such times and under such conditions as may be laid down in such rules and bye-laws and shall be recoverable in the same manner as the water and drainage tax.

Explanation.—Supply of water for domestic consumption and use shall not be deemed to include a supply—

(*a*) for any trade, manufacture or business,

(*b*) for gardens or for purposes of irrigation,

(*c*) for building purposes,

(*d*) for fountains, swimming baths, public baths, tanks in or near temples, and churches and mosques or for any ornamental or mechanical purpose, and

(*e*) for animals, or for washing vehicles, where such animals or vehicles are kept for sale or hire,

but shall be deemed to include a supply—

(i) for flushing latrines or drains,

(ii) for all baths other than swimming baths or public baths,

(iii) for the consumption and use of inmates of hotels, boarding houses and residential clubs and for baths used by such inmates, and

[(iv) for the consumption and use of persons, resorting to theatres and cinemas.]

Private Water supply for Non-domestic purposes.

Commissioner's power to supply water for non domestic purposes at rates fixed by Standing Committee.

174. (1) The Commissioner may, subject to such rules as may be framed by Our Government from time to time and with the sanction of the Standing Committee, supply water for any purpose other than domestic consumption and use on receiving a written application specifying the purpose for which such supply is required and the quantity likely to be consumed.

(2) For all water supplied under sub-section (1), payment shall be made at such rates and on such conditions as may be laid down by such rules as may be framed by Our Government from time to time.

Cutting off Water supply.

175. (1) The Commissioner may cut off the supply of water from any premises—

Power to cut off water supply.

(a) if the premises are unoccupied;

(b) if any water-tax or any sum due for water or for the cost of making a connection or the cost or hire of a meter or the cost of carrying out any work or test connected with the water supply which is chargeable to any person by or under this Act is not paid within thirty days after a bill for such tax or same has been presented;

(c) if after receipt of a notice from the Commissioner requiring him to refrain from so doing the owner or occupier continues to use the water or to permit it to be used in contravention of any bye-law made under this Act;

(d) if the owner or occupier wilfully or negligently damages his meter or any pipe or tap conveying water;

(e) if the occupier refuses to admit the Commissioner into premises which he proposes to enter for the purposes of executing any work or of placing or removing any apparatus or of making any examination or inquiry in connection with the water supply, or prevents the Commissioner doing such work, placing or removing such apparatus or making such examination or inquiry;

(f) if any pipes, taps, works or fittings, connected with the water supply are found on examination by the Commissioner to be out of repair to such an extent as to cause waste or contamination of water; and

(g) if the owner or occupier causes pipes, taps, works or fittings connected with the water supply to be placed, removed, repaired or otherwise interfered with in violation of the bye-laws.

[Provided that in cases falling under sub-clauses (d) (e) (f) or (g) the Commissioner shall not take action unless notice of not less than twenty-four hours has been given to the owner or occupier of the premises.

(2) (a) The owner and the occupier of the premises shall be jointly and severally liable for the payment of all the sums referred to in clause (b) of sub-section (1) except water tax.

(b) the sums referred to in clause (a) shall be a charge on the premises.

(3) The expense of cutting off the supply shall be paid by the owner and occupier of the premises jointly and severally.]

(4) In cases under clause (b) of sub-section (1), as soon as any money for non-payment of which water has been cut off, together with the expense of cutting off the supply, has been paid by the owner or occupier, the Commissioner shall cause water to be supplied as before on payment of the cost (if any) of reconnecting the premises with the water works.

(5) No action taken under this Section shall relieve any person from any penalties or liabilities which he may otherwise have incurred.

Non-liability of Corporation when supply reduced or not made in certain cases.

176. The Corporation shall not be liable to any penalty or damages for cutting off the supply of water or for not supplying water, in the case of unusual drought, other unavoidable cause or accident, or the necessity for relaying or repairing pipes.

Lighting.

Provision for lighting public streets etc

177. (1) The Commissioner shall take measures for lighting in a suitable manner the public streets and public markets and all places of public resort vested in the Corporation by electricity, gas, oil, or such other illuminant as the Council may determine.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for Our Government to provide any public street with a lighting system and either work it through their own officers or hand it over to the Council for being worked.

(3) If it is worked by Our Government through their officers, an annual contribution of such amount as may be fixed by Our Government after ascertaining the views of the Council shall be paid by the Council to Our Government.

(4) If it is handed over to the Council, it shall be so done on such terms as may be settled by Our Government and the Council.

Public Drainage.

Vesting of drains in Corporation

178. (1) All public drains, pipes and drainage works [not vested in or belonging to Our Government] existing at the time of the coming into operation of this Act or afterwards made at the cost of the Corporation or otherwise, and all works, materials and things appertaining thereto shall vest in the Corporation.

[(2) Notwithstanding anything contained in sub-section (1) any drainage works constructed by and vesting in Our Government may on such terms as may be settled by Our Government and the Council be handed over to the Council for its being worked and so long as the arrangement lasts, the drainage shall be deemed to be a Municipal drainage work,

(3) Notwithstanding anything contained in sub-section (2), it shall be lawful for Our Government to work the drainage system through their own officers and in such cases an annual contribution of such amount as may be fixed by Our Government after ascertaining the views of the Council shall be paid by the Council to Our Government.]

Maintenance of system of drainage by the Corporation.

179 The Corporation shall, so far as the means at their disposal permit, provide and maintain a sufficient system of public drains throughout the City.

Private Drainage.

Control over house-drains, privies and cess-pools.

180. All house drains whether within or without the premises to which they belong, and all private latrines, and cess-pools within the City shall be under the control of the Corporation, but shall be altered, repaired and kept in proper order, at the expense of the owner of the premises to which the same belong or for the use of which they were constructed and in conformity with bye-laws framed by the Council in this behalf.

Connection of house-drains with public drains.

181. (1) The Commissioner shall, on application by the owner or occupier of any premises or the owner of a private street, arrange, in accordance with the bye-laws for the connection if practicable, of the applicant's drain with a public drain at the applicant's expense.

(2) If there is a public drain or other place set apart by the Corporation for the discharge of drainage within a distance not exceeding 100 feet of the nearest point on any premises, the Commissioner may by notice direct the owner of the said premises to construct a drain leading therefrom to such drain or place and execute all such works as may be necessary in accordance with the bye-laws at such owner's expense.

(3) If any premises are in the opinion of the Commissioner without sufficient means of effectual drainage but no part thereof is situated within 100 feet of a public drain or other place set apart by the Corporation for the discharge of drainage, the Commissioner may by notice direct the owner of the said premises to construct a closed cess-pool of such material, dimensions and description, in such position and at such level as the Commissioner thinks necessary and to construct a drain or drains emptying into such cess-pool and to execute all such works as may be necessary in accordance with the bye-laws.

(4) It shall not be lawful for the owner of any building constructed or reconstructed after the commencement of this Act to occupy it or cause or permit it to be occupied until he has obtained a certificate

from the Commissioner that the said building is provided with such means of drainage as appear to the Commissioner to be sufficient.

Commissioner's power to drain premises in combination.

182. (1) When the Commissioner is of opinion that any group or block of premises any part of which is situate within one hundred feet of a public drain, already existing or about to be constructed may be drained more economically or advantageously in combination than separately, the Commissioner may, with the approval of the Standing Committee, cause such group or block of premises to be drained by such method as appear to the Commissioner to be best suited therefor and the expenses incurred by the Commissioner in so doing shall be paid by the owners in such proportions as the Standing Committee may think fit [and shall be recoverable in the same manner as the property tax.]

(2) Not less than fifteen days before any work under this Section is commenced the Commissioner shall give written notice to the owners of—

(*a*) the nature of the intended work,

(*b*) the estimated expenses thereof, and

(*c*) the proportion of such expenses payable by each owner.

(3) The owners for the time being of the several premises constituting a group or block drained under sub-section (1) shall be the joint owners of every drain constructed, erected or fixed, or continued for the special use and benefit only of such premises and shall, in the proportion in which it is determined that they are to contribute to the expenses incurred by the Commissioner under sub-section (1), be responsible for the expense of maintaining every such drain in good repair and efficient condition.

Commissioner's power to close or limit the use of existing private drains.

183. (1) Where a drain connecting any premises with a public drain or other place set apart by the Corporation for the discharge of drainage is sufficient for the effectual drainage thereof and is otherwise unobjectionable, but is not, in the opinion of the Commissioner, adapted to the general drainage system of the City, or of the part of the City in which such drain is situated, the Commissioner, with the approval of the Standing Committee may—

(*a*) subject to the provisions of sub-section (2) close, discontinue or destroy the said drain and do any work necessary for that purpose; or

(*b*) direct that such drain shall, from such date as he fixes in this behalf, be used for sewage only, or for water unpolluted with sewage only, and may construct at the cost of the Corporation an entirely distinct drain either for water unpolluted with sewage or for sewage.

(2) No drain may be closed, discontinued or destroyed by the Commissioner under clause (a) of sub-section (1) except on condition of his providing another drain as effectual for the drainage of the premises and communicating with a public drain or other place aforesaid and the expense of the construction of any drain so provided by the Commissioner and of any work done shall be paid by the Corporation.

Building, etc. not to be erected without permission over drains.

184. (1) Without the permission of the Commissioner, no person shall place or construct any fence, building, culvert, pipe, drain, drain covering or other structure or any street, or cable over, under, in or across any public drain or stop up, divert, obstruct or in any way interfere with any public drain, whether it passes through public or private ground.

(2) The Commissioner may remove or otherwise deal with anything placed or constructed in contravention of sub-section (1) as he shall think fit, and the cost of so doing shall be recoverable from the owner thereof in the manner provided in Section 10?.

Construction of culverts by owner or occupier.

185. (1) The Commissioner may by notice require the owner or occupier of any building or land adjoining a public street to construct culverts or drain coverings over the side channels or ditches at the entrances to the said building or land.

(2) Such culverts or drain coverings shall be of the form and size and consist of such materials as may be specified in the said notice, and shall be maintained and kept free from all obstruction at the expense of the said owner or occupier.

Maintenance of troughs and pipes for catching water.

186. The owner or occupier of any building in a public street shall, within fifteen days after receipt of notice in that behalf from the Commissioner, put up, and thenceforward maintain proper troughs and pipes for catching and carrying the water from the roof and other parts of such building and for discharging such water in such manner as the Commissioner may allow.

Public Latrines.

Provision of Public latrines

187. The Corporation shall provide and maintain in proper and convenient places a sufficient number of public latrines and shall cause the same to be kept clean and in proper order.

Provision of latrines by owner or occupier.

[188 (1) The Commissioner may, by notice, require the owner or occupier of any building, within such time and in accordance with such directions as may be specified therein to provide flush-out or other latrines for the use of the persons employed in or about or occupying such

building or alter or remove from an unsuitable to a more suitable place any existing latrine. Such owner or occupier shall keep every such latrine clean and in proper order.

(2) Every owner or occupier of the ground on which any block of huts stands shall, within such time and in accordance with such directions as may be specified in a notice issued by the Commissioner, provide flush-out or other latrines for the use of the inhabitants of such block of huts or alter or remove from an unsuitable to a more suitable place any existing latrine and shall keep the same clean and in proper order.]

Provision of latrines and urinals for labourers.

189. Every person employing workmen, labourers or other persons exceeding twenty in number shall provide and maintain for the separate use of person of each sex so employed latrines of such description and number as the Commissioner may by notice require, and within such time as may be fixed in the notice and shall keep the same clean and in proper order.

Provision of latrines and urinals for markets, cart-stands, and cattle-stands.

190. The Commissioner may by notice require any owner or manager of a market, cart-stand, cattle-stand, choultry, theatre, dock, wharf or other place of public resort within such time as may be specified in such notice to provide and maintain for the separate use of persons of each sex latrines of such description and number and in such a position as may be specified and to keep the same clean and in proper order.

Latrines to be screened from view.

191. All [flush-out or other] latrines shall be so constructed as to screen persons using the same from the view of persons passing by or residing in the neighbourhood.

General Powers.

Power to carry wire, pipes, drains, etc., through private property subject to causing as little inconvenience as possible and paying for direct damage.

192. The Commissioner may carry any cable, wire, pipe, drain or channel of any kind to establish or maintain any system of drainage, water-supply or lighting, through, across, under or over any road, street or place laid out for a road or street after giving reasonable notice to the owner or occupier through, across, under, over, or up the side of, any land or building in the City, and may place and maintain posts, poles, standards, brackets or other contrivances to support cables, pipes, channels, wires and lights on any pole or post in the City not owned by Our Government and may do all acts necessary or expedient for repairing or maintaining any such cable, wire, pipe, drain, channel,

post, pole, standard, bracket or other similar contrivance in an effective state for the purpose for which it is intended to be used, or for removing the same:

Provided that such work shall be done so as to cause the least practicable nuisance or inconvenience to any person:

Provided further that the Commissioner shall, with the sanction of the Standing Committee, pay compensation to any person who sustains damage by the exercise of such power.

Prohibition against making connection without permission.

193. (1) No person shall, without the permission of the Commissioner, make any connection with any Municipal cable, wire, pipe, drain or channel or with the house-connection of any other person.

(2) The Commissioner may by notice require any connection made in contravention of sub-section (1) to be demolished, removed, closed, altered or re-made.

Power to require railway level, etc., to be raised or lowered.

194. The Corporation shall not conduct any pipe or drain or other work connected with the water supply or drainage of the City across a line of railway without the previous sanction of Our Government and except in such manner and in conformity with such conditions as Our Government may lay down.

Powers of Corporation in respect of works outside the City.

195. (1) The Corporation shall not undertake new work beyond the limits of the City without the sanction of Our Government.

(2) The Corporation may, in the execution and for the purpose of any works beyond the limits of the City sanctioned by Our Government exercise all the powers which they may exercise within the City throughout the line of country through which conduits, channels, pipes, lines of posts and wires and the like run, and over any lake or reservoir from which a supply of water for the use of the City is derived, and over all lands at a distance not exceeding one thousand yards beyond the high-water level of any such lake or reservoir, and over any lands used for sewage arms, sewage disposal tanks, filters and other works connected with the drainage of the City.

CHAPTER VIII – SCAVENGING.

Provision of places of deposit for rubbish and filth.

["196. (1) The Commissioner shall—

(i) provide or appoint proper and convenient situations, depots or places for the temporary deposit of rubbish and filth and for the final disposal of rubbish, filth and carcasses of animals;

(ii) provide dust-bins for the temporary deposit of rubbish;

(iii) provide vehicles or other suitable means for the removal of rubbish and carcasses of animals; and

(iv) provide covered vehicles or vessels for the removal of filth.

(2) The Commissioner shall make adequate provision for preventing the depots, places, dust-bins, vehicles and vessels referred to in sub-section (1) from becoming sources of nuisance.]

Public notice ordering deposit of rubbish and filth by occupier.

197. (1) The Commissioner may with the previous sanction of the Standing Committee by public notice direct that all rubbish and filth accumulating in any premises in any street or quarter of the City specified in the notice shall be collected by the owner or occupier of such premises and deposited in a box or basket or other receptacle, of the kind specified in such notice, to be provided by such owner or occupier and kept at or near the premises.

(2) The Commissioner may by public notice direct that all rubbish and filth accumulating in any latrine not connected with a drain and in respect of which no contract under Section 199 has been entered into, shall be collected by the owner or occupier and deposited in Municipal carts.

(3) The Commissioner may cause public dust-bins or other convenient receptacles to be provided at suitable intervals and in proper and convenient situation in any street or quarter in respect of which no notice issued under sub-section (1) or sub-section (2) is for the time being in force, and may by public notice direct that all rubbish and filth accumulating in any premises, the entrance to which is situated within fifty yards of any such receptacle, shall be collected by the owner or occupier of such premises and deposited in such receptacle.

Removal of rubbish and filth accumulating in large quantities on premises.

198. When any premises are used for carrying on any manufacture, trade or business or in any way so that rubbish or filth is accumulated in quantities which are, in the opinion of the Commissioner, too considerable to be deposited in any of the methods prescribed by a notice issued under Section 197, the Commissioner may—

(*a*) by notice require the owner or occupier of such premises to collect all rubbish and filth accumulating thereon, and to remove the same at such times, in such carts or receptacles, and by such routes as may be specified in the notice, to a depot or place provided or appointed under Section 196; or

(*b*) after giving such owner or occupier notice of his intention, cause all rubbish and filth accumulated in such premises to be removed,

and charge the said owner or occupier for such removal such periodical fee as may, with the sanction of the Standing Committee, be specified in the notice issued under clause (*a*).

Contract with owner or occupier for removal of rubbish and filth.

199. The Commissioner may contract with the owner or occupier of any premises to remove rubbish or filth from such premises on such terms as to time and period of removal and other matters as may seem suitable to the Commissioner, and on payment of fees at such rate as the Council may determine.

Provision for daily cleansing of streets and removal of rubbish and filth.

200. The Commissioner shall provide—

(*a*) for the daily surface-cleansing of all public streets and the removal of the sweepings therefrom, and

(*b*) for the removal of—

(i) the contents of all receptacles and depots and the accumulations at all places provided or appointed by him under Section 186 for the temporary deposit of any of the things specified therein ; and

(ii) all things deposited by owners or occupiers of premises in pursuance of any notice issued under Section 197.

Rights of property of Corporation in things deposited in receptacle.

201. All rubbish and filth and other matter collected by the Corporation under this Act and all things deposited in depots or places provided or appointed under Section 196 shall be the property of the Corporation.

Directions as to removal of rubbish and filth.

202. In cases not provided for by any notice issued under Section 198, the Commissioner shall, with the sanction of the Standing Committee, lay down—

(*a*) the hours within which rubbish and filth may be removed ;

(*b*) the kind of cart or other receptacle in which rubbish and filth may be removed ; and

(*c*) the route by which such carts or other receptacles shall be taken.

Maintenance of establishment for removal of rubbish and filth.

203. The Corporation shall maintain an establishment under the control of the Commissioner for the removal of rubbish and filth from latrines which are not connected with a public drain.

Prohibition against accumulation of rubbish or filth on premises.

204. (1) No person who is bound by any notice issued under Section 197 or Section 198, as the case may be, to collect and deposit or remove rubbish or filth accumulating on any premises shall allow the same so to accumulate for more than twenty-four hours.

(2) No person shall deposit any rubbish or filth otherwise than as provided in a notice issued under Section 197 or Section 198 as the case may be.

Prohibition against irregular methods of depositing rubbish or filth.

[(3) No person shall after due provision has been made under Sections 196 and 200 for the deposit and removal of the same—

Prohibition against irregular removal of rubbish or filth.

(*a*) deposit the carcasses of animals, rubbish or filth in any street or on the veranda of any building or on any unoccupied ground alongside any street or on any public quay, jetty or landing place or on the bank of water course or tank; or

Prohibition against deposit of rubbish or filth in unauthorised place or manner.

(*b*) deposit filth or carcasses of animals in any dust-bin or in any vehicle not intended for the removal of the same; or

(*c*) deposit rubbish in any vehicle or vessel intended for the removal of filth except for the purpose of deodorizing or disinfecting the filth].

(4) No owner or occupier of any premises shall keep or allow to be kept for more than twenty-four hours, or otherwise than in a receptacle approved by the Commissioner, any rubbish or filth on such premises or any place belonging thereto or neglect to employ proper means to remove the rubbish or filth from or to cleanse such receptacle and to dispose of such rubbish or filth in the manner directed by the Commissioner, or fail to comply with any requisition of the Commissioner as to the construction, repair, paving or cleansing of any latrine on or belonging to the premises.

Prohibition against keeping rubbish or filth for more than twenty-four hours, or in unauthorised place or manner

(5) No owner or occupier shall allow the water of any sink, drain or latrine or the drainage from any stable or place, or any other filth to run down on, or to, or be put upon, any street, or into any drain in or alongside of any street, except in such manner as shall prevent any avoidable nuisance from any such filth soaking into the walls or ground at the side of the said drain.

Prohibition against allowing sewage to flow in streets.

CHAPTER IX STREETS.

Public Streets.

205. All public streets in the City not reserved under the control of Our Government, and the side drains, pavements, stones and other materials thereof, and all erections, materials, implements and other things provided for such streets and all trees, not being private property, growing thereon or by the side thereof, shall vest in the Corporation.

Vesting of public streets and their appurtenances in Corporation.

206. The Corporation may cause the public streets to be maintained and repaired and may make all improvements thereto which are necessary or expedient for the public safety or convenience.

Maintenance and repair of streets.

207. (1) The Commissioner may, subject always to such sanction as may be required under Chapter IV.

Power of authorities in regard to streets.

(a) lay out and make new streets ;

(b) construct bridges and sub-ways ;

(c) turn, divert, or, with the special sanction of the Council and Our Government, permanently, close any public street or part thereof; and

(d) widen, open, extend or otherwise improve any public street.

(2) Reasonable compensation shall be paid to the owners and occupiers of any land or buildings which are acquired for or affected by any such purposes.

[(3) In determining such compensation allowance shall be made for any benefit accruing to the owner or occupier concerned from the construction or improvement made by the Commissioner.]

208. (1) When any public street is permanently closed under Section 207, the Corporation may dispose of the site or so much thereof as is no longer required making due compensation to any person injured by such closing.

Power to dispose of permanently closed streets.

(2) In determining such compensation, allowance shall be made for any benefit accruing to the same premises or any adjacent premises belonging to the same owner from the construction or improvement of any other public street at or about the same time that the public street, on account of which the compensation is paid, is closed.

209. (1) The Commissioner may, subject always to such sanction as may be required under Chapter IV, acquire;

Acquisition of land and building for improvements.

(a) any land required for the purpose of widening, opening, extending or otherwise improving any public street, or of making any new public street, and the buildings, if any, standing upon such land.

(b) any land outside the proposed street alignment, with the buildings, if any standing thereupon which the Council may consider it expedient to acquire.

(2) Any land or building acquired under Sub-section (1), clause (b), may be sold, leased or otherwise disposed of after public advertisement, and any conveyance made for that purpose may comprise such conditions as the Standing Committee thinks fit as to the removal of

existing building, if any, description of the new building (if any) to be erected, the period with in which the new building (if any) shall be completed and any other similar matters.

(3) The Standing Committee may require any person to whom any land or building is transferred under sub-section (2) to comply with any conditions comprised in the said conveyance before it places him in possession of the land or building.

Power to prescribe building line and street alignment.

210. The Standing Committee may—

(*a*) prescribe for any public street a building line or a street alignment or both a building line and a street alignment;

(*b*) from time to time but subject in each case to its receiving the authority of the Council in that behalf, define a fresh line in substitution for any line so defined or for any part thereof, provided that such authority shall not be accorded

(i) unless, at least one month before the meeting of the Council at which the matter is decided, public notice of the proposal has been given by the Commissioner by advertisement in the local newspapers and in Our Government Gazette and special notice thereof signed by the Commissioner, has also been put up in the street or part of the street or which such fresh line is proposed to be defined; and

(ii) until the Council has considered all objections to the said proposal made in writing and delivered at the Municipal office not less than three clear days before the day of such meeting.

Restriction on erection of or addition to buildings within street alignment or building ine.

211. (1) No person shall construct any portion of any building with in a streetalignment defined under Section 210 provided, however that the Commissioner may in his discretion permit additions to a building to be made within a street alignment, if such additions merely add to the height and rest upon an existing building or wall, upon the owner of the building executing an agreement binding himself and his successors in interest,

(*a*) not to claim compensation in the event of the Commissioner at any time thereafter calling upon him or such successors to remove any building erected or added to in pursuance of such permission or any portion thereof, and

(*b*) to pay the expenses of such removal:

Provided that the Commissioner shall in every case in which he gives permission report his reasons in writing to the Standing Committee.

If the Commissioner refuses to grant permission to erect or add to any building on the ground that the proposed site falls wholly or in part within a street alignment prescribed under Section 210 and if such

site or the portion thereof which falls within such alignment be not acquired on behalf of the Corporation within one year after the date of such refusal, the Corporation shall pay reasonable compensation to the owner of the site.

(2) No person shall erect or add to any building between a street alignment and a building line defined under Section 210 except with the permission of the Commissioner, who may when granting permission impose such conditions as the Standing Committee may lay down for such cases.

212. (1) When any building or part thereof abutting on a public street is within a street alignment defined under Section 210, the Commissioner may whenever it is proposed—

Setting back projecting buildings or walls.

(a) to rebuild such building or take it down to an extent exceeding one-half thereof above the ground level, such half to be measured in cubic feet; or

(b) to remove, reconstruct or make any addition to any portion of such building which is within the street alignment:

in any order which he issues concerning the rebuilding, alteration or repair of such building require such building to be set back to the street alignment.

(2) When any building or any part thereof within the street alignment falls down or is burnt down or is, whether by order of the Commissioner or otherwise taken down, the Commissioner may forthwith take possession on behalf of the Corporation of the portion of land within the street alignment theretofore occupied by the said building and, if necessary, clear it.

(3) Land acquired under this Section shall be deemed a part of the public street and shall vest in the Corporation.

(4) When any building is set back in pursuance of any requisition made under sub-section (1), or when the Commissioner takes possession of any land under sub-section (2), the Corporation shall forthwith make full compensation to the owner for any direct damage which he may sustain thereby.

Explanation—The expression 'direct damage' as used in sub-section (4) with reference to land means the market value of the land taken and the depreciation, if any, in the ordinary market value of the rest of the land resulting from the area being reduced in size; but does not include damage due to the prospective loss of any particular use to which the owner may allege that he intended to put the land, although such use may be injuriously affected by the reduction of the site.

213. The Commissioner may, upon such terms as he thinks fit, allow any building to be set forward for the purpose of improving the line of a public street and may, with the sanction of the Standing Committee, by notice require any building to be so set forward in the case of reconstruction thereof or of a new construction.

Setting buildings forward to improve line of street.

Explanation.—For the purpose of this Section a wall separating any premises from a public street shall be deemed to be a building; and it shall be deemed a sufficient compliance with permission or requisition to set forward a building to the street alignment if a wall of such material and dimensions as are approved by the Commissioner is erected along the said line.

214. The Standing Committee may prepare schemes and plans or proposed public streets, showing the direction of such streets, the street alignment and building line on each side of them, their intended width and such other details as may appear desirable.

Projected streets.

(2) The width of such proposed streets shall ordinarily not be less than [forty] feet.

(3) When any plan has been prepared under sub-section (1), the provisions of Section 212 shall apply to all buildings, so for as they stand across the street alignment of the projected street.

215. The Council shall, so far as it considers it requisite for the public convenience, and so far as funds permit, cause the chief public streets to be watered, and for that purpose may provide such water-carts, animals and apparatus as it thinks necessary.

Watering of streets.

216. The Commissioner may by an order temporarily close any street to traffic for repair, or in order to carry out any work connected with drainage, water-supply or lighting or any of the purposes specified in Schedule III;

Temporary closure of streets.

Provided that such work shall be completed and such street reopened to traffic with all reasonable speed.

217. It shall not be lawful for any person, without the permission of the Commissioner to displace, take up or make any alteration in the fences, posts, pavement, flags or other materials of any public street.

Protection of appurtenances and materials of streets.

Private Streets.

Owner's obligation to make a street when disposing of land as building sites.

218. If the owner of any land utilises, sells, leases or otherwise disposes of such land or any portion or portions of the same as sites for the construction of buildings, he shall, save in such cases as the site or sites may abut on an existing public or private street, lay down and make a street or streets or road or roads giving access to the site or sites and connecting with an existing public or private street.

Making of new private streets.

219. (1) Any person intending to lay out or make a new private street must send to the Commissioner a written application with the plans and sections showing the following particulars, namely—

(*a*) the intended level, direction and width of the street,

(*b*) the street alignment and the building line, and

(*c*) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewering, draining, conserving and lighting the street.

(2) The provisions of this Act and of any rules or bye-laws made under it as to the level and width of public streets and the height of the buildings abutting thereon shall apply also in the case of streets referred to in sub-section (1); and all the particulars referred to in that sub-section shall be subject to approval by the Standing Committee.

(3) Within sixty days after the receipt of any application under sub-section (1 the Standing Committee shall either sanction the making of the street on such conditions as it may think fit or disallow it, or ask for further information with respect to it.

(4) Such sanction may be refused—

(i) if the proposed street would conflict with any arrangements which have been made, or which are in the opinion of the Standing Committee likely to be made, for carrying out any general scheme of street improvement;

(ii) if the proposed street does not conform to the provisions of the Act, rules and bye-laws referred to in sub-section (2); or

(iii) if the proposed street is not designed so as to connect at one end with a street which is already open.

(5) No person shall lay out or make any new private street without or otherwise than in conformity with the orders of the Standing Committee. If further information is asked for no steps shall be taken to lay out or make the street until orders have been passed upon receipt of such information:

Provided that the passing of such orders shall not in any case be delayed for more than sixty days after the Standing Committee has received all the information which it considers necessary to enable it to deal finally with the said application.

220. (1) If any person lays out or makes any street referred to in Section 219, without or otherwise than in conformity with the orders of the Standing Committee, the Commissioner may, whether or not the offender be prosecuted under this Act, by notice—

Alteration or demolition of street made in breach of Section 219.

(a) require the offender to show sufficient cause, by a written statement signed by him and send to the Commissioner on or before such day as may be specified in the notice, why such street should not be altered to the satisfaction of the Commissioner, or if such alteration be impracticable, why such street should not be demolished, or

(b) require the offender to appear before the Commissioner either personally or by a duly authorised agent, on such day and at such time and place as may be specified in the notice, and show cause as aforesaid.

(2) If any person on whom such notice is served fails to show sufficient cause to the satisfaction of the Commissioner why such street should not be so altered or demolished the Commissioner may pass an order directing the alteration or demolition of such streets.

221. (1) If any private street or part thereof is not levelled, paved, metalled, flagged, channelled, sewered, drained, conserved, or lighted to the satisfaction of the Commissioner, he may by notice require the owners or occupiers of premises, fronting or abutting on such street or part thereof to carry out any work which in his opinion may be necessary and within such time as may be specified in such notice.

Power of Commissioner to order work to be carried out or to carry it out himself in default.

(2) If such work is not carried out within the time specified in the notice, the Commissioner may, if he thinks fit, execute it and the expenses incurred shall be paid by the owners [referred to in sub-section (1) in such proportion as may be settled by the Commissioner.]

222. If any street has been levelled, paved, metalled, flagged, channelled, sewered, drained, conserved and lighted under the provisions of Section 221, such street shall, on the requisition of [the majority of the owners referred to in sub-section (1) of that section be declared a public street.]

Right of owners to require streets to be declared public.

Encroachments on streets.

223. No one shall build any wall or erect any fence or other obstruction, encroachment or projection in or over any street except as hereinafter provided.

Prohibition against Obstructions in streets.

224. (1) No door, gate, bar or ground-floor window shall without a licence from the Commissioner be hung or placed so as to open outwards upon any street.

Prohibition and regulation of doors, ground floor windows and bars opening outwards.

(2) The Commissioner may by notice require the owner of such door, gate, bar or window to alter it so that no part thereof when open shall project over the street.

Removal of encroachments.

225. (1) The Commissioner may by notice require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar, or ground-floor window) situated against or in front of such premises and in or over any street [or any public place the control of which is vested in the Corporation.]

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a prescriptive title or that it was erected with the consent of any municipal authority duly empowered in that behalf, and that the period, if any, for which the consent is valid has not expired, the Corporation shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

Power to allow certain projections and erections.

[226. (1) The Commissioner may grant a licence subject to such conditions and restrictions as he may think fit to the owner or occupier of any premises —

(*a*) to put up or continue to have varendas, balconies, sun-shades, weather-frames and the like, to project over a street, or

(*b*) in streets in which the construction of arcades has been sanctioned by the council, to put up or continue to have an arcade, or

(*c*) to construct any step or drain-covering necessary for access to the premises.

(2) The Commissioner may also grant a licence subject to such conditions and restrictions as he may think fit, for any temporary construction in any street or in any public place the control of which is vested in the corporation.

(3) No license shall be granted under sub-section (1) if the projection or construction is likely to be injurious to health or cause public inconvenience or otherwise materially interfere or result in material interference with the use of the road as such.

(4) On the expiry of any period for which a license has been granted under this section or after due communication of an order of suspension or revocation of such license the Commissioner may, without notice, cause any projection or construction put up under sub-section (1) or (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in Section 409 from the person to whom the license was granted.]

227. (1) The Commissioner shall, so far as is practicable during the construction or repair of any street, drain or premises vested in the Corporation,

Precautions during repairs of streets.

(a) cause the same to be fenced and guarded,

(b) take proper precautions against accident by shoring up and protecting the adjoining buildings, and

(c) cause such bars, chains or posts to be fixed across or in any street in which any such work is under execution as are necessary in order to prevent the passage of vehicles or animals and avert danger.

(2) The Commissioner shall cause such drain, street or premises to be sufficiently lighted or guarded during the night while under construction or repair.

(3) The Commissioner shall, with all reasonable speed, [cause the said work to be completed, the ground to be filled in the side drain, street or premises to be repaired and the rubbish occasioned thereby to be removed.]

228. No person shall without lawful authority remove any bar, chain, post, or shoring timber or remove or extinguish any light set up under Section 227.

Prohibition against removal of bars and lights.

229. (1) No person shall make a hole or cause any objection in any street unless he previously obtains the permission of the Commissioner and complies with such conditions as he may impose.

Making holes and causing obstruction.

(2) When such permission is granted, such person shall, at his own expense cause such hole or obstruction to be sufficiently fenced and enclosed, until the hole or obstruction is filled up or removed and shall cause such hole or obstruction to be sufficiently lighted during the night.

(3) If any obstruction is caused in any street by the fall of structures, trees, or the fences, the owner or occupier of the premises concerned shall within twelve hours of the occurrence of such fall, or within such further period as the Commissioner may [by written order] allow, clear the street of such obstruction.

230. If any person intends to construct or demolish any building or to alter or repair the outward part thereof, and if any street or foot-way is likely to be obstructed or rendered inconvenient by means of such work, he shall first obtain a licence from the Commissioner in that behalf and shall also—

Licence for work on buildings likely to cause obstruction.

(a) cause the said building to be fenced and guarded,

(b) sufficiently light it during the night, and

(c) take proper precautions against accidents during such time as the public safety or convenience requires.

Naming Streets and Numbering Buildings.

231. (1) The Council shall give names or numbers to new public streets and may alter the name or number of any public street.

Naming of public streets.

(2) The Commissioner shall cause to be put up or painted in English and in Malayalam on a conspicuous part of some building, wall, or place at or near each end, corner or entrance of every public street, the name or number by which it is to be known

(3) No person shall without lawful authority destroy, pull down or deface any such name or number or put up any name or number different from that put up by order of the Commissioner.

232. (1) The Commissioner may cause a number to be affixed to the side or outer door of any building or to some place at the entrance of the enclosure thereof.

Numbering of building.

(2) No person shall without lawful authority destory, pull down or deface any such number.

(3) When a number has been affixed under sub-section (1), the owner of the building shall be bound to maintain such number and to replace it if removed or defaced; and if he fails to do so, the Commissioner may by notice require him to replace it.

CHAPTER X—BUILDING REGULATION.

General Powers.

Building rules.

233. (1) Our Government may make rules—

(a) for the regulation or restriction of the use of sites for building; and

(b) for the regulation or restriction of building.

(2) Without prejudice to the generality of the power conferred by sub-section (1), clause (a), rules made under that clause may provide—

(a) that no insanitary or dangerous site shall be used for building, and

(b) that no site shall be used for the construction of the building intended for public worship if the construction of the building thereon will wound the religious feelings of any class of persons.

(3) Without prejudice to the generality of the power conferred by sub-section (1), clause (b), rules made under that clause may provide for the following matters:—

(a) information and plans to be submitted together with applications for permission to build;

(*b*) height of buildings, whether absolute or relative to the width of streets;

(*c*) level and width of foundation, level of lowest floor and stability of structure;

(*d*) number and height of storeys composing a building and height of rooms;

(*e*) provision of sufficient open space, external or internal, and adequate means of ventilation;

(*f*) provision of means of egress in case of fire;

(*g*) provision of secondary means of access for the removal of house refuse;

(*h*) materials and methods of construction of external and party walls, roofs and floors;

(*i*) position, materials and methods of construction of hearths, smoke escapes, chimneys, stair cases, latrines, drains and cess-pools;

(*j*) paving of yards;

(*k*) restrictions on the use of inflammable materials in building; and

(*l*) in the case of wells, the dimensions of the well, the manner of enclosing it, and if the well is intended for drinking purposes, the means which shall be used to prevent pollution of the water.

(4) No piece of land shall be used as a site for the construction of a building, and no building shall be constructed or reconstructed otherwise than in accordance with the provisions of this Act and of any rules or bye-laws made thereunder relating to the use of building sites or the construction or reconstruction of buildings.

Power of Corporation to regulate future construction of certain classes of buildings in particular streets or localities.

234. (1) The Council may give public notice of their intention to declare—

(*a*) that, in any streets or portions of streets specified in the notice,

(i) continuous building will be allowed.

(ii) the elevation and construction of the frontage of all buildings thereafter constructed or reconstructed shall, in respect of their architectural features, be such as the Standing Committee may consider suitable to the locality, or

(*b*) that in any localities specified in the notice, the construction of only detached buildings will be allowed, or

(*c*) that in any streets, portions of streets or localities specified in the notice, the construction of shops, warehouses, factories, huts, or buildings of a specified architectural character or buildings destined for particular uses will not be allowed without the special permission of the Standing Committee.

(2) No objections to any such declaration shall be received after a period of three months from the publication of such notice.

(3) The Standing Committee shall consider all objections received within the said period and may then confirm the declaration, and, before doing so, may modify it, but not so as to extend its effect.

(4) The Commissioner shall publish any declaration so confirmed and it shall take effect from the date of publication.

(5) No person shall, after the date of publication of such declaration, construct or reconstruct any building in contravention of any such declaration.

Buildings at corner of streets.

235. (1) The Council may require any building intended to be erected at the corner of two streets to be rounded off or splayed off to such height and to such extent otherwise as it may determine, and may acquire such portion of the site at the corner as it may consider necessary for public convenience or amenity.

(2) For any land so acquired the Corporation shall pay compensation.

(3) In determining such compensation, allowance shall be made for any benefit accruing to the same premises from the improvement of the streets.

Prohibition against use of inflammable materials for buildings without permission.

[236. (1) No external roof, veranda, pandal or wall of a building and no shed or fence shall be constructed or reconstructed of cloth, grass leaves, mats, or other inflammable materials except with the permission of the Commissioner, nor shall any such roof, veranda, pandal, wall, shed or fence constructed or re-constructed in any year be retained in a subsequent year, except with such permission.

(2) Every permission granted under sub-section (1) shall expire at the end of the year for which it is granted.]

Buildings other than huts.

Application to construct or reconstruct building.

237. (1) If any person intends to construct or reconstruct a building, he shall send to the Commissioner—

(a) an application in writing for approval of the site, together with a site-plan of the land, and

(b) an application in writing for permission to execute the work together with a ground-plan elevations and sections of the building and a specification of the work.

[Explanation:—Building in this sub-section shall include a wall or fence of whatever height bounding or abutting on any public street.]

(2) Every document furnished under sub-section (1) shall contain such particulars and be prepared in such manner as may be required under rules or bye-laws.

Necessity for prior approval of the site.

238. The Commissioner shall not grant permission to construct or reconstruct a building unless and until he has approved of the site on an application made under Section 237.

Prohibition against commencement of work without permission.

239. The construction or reconstruction of a building shall not be begun unless and until the Commissioner has granted permission for the execution of the work.

Period within which Commissioner is to signify approval or disapproval.

240. Within thirty days after the receipt of any application made under Section 237 for approval of a site, or of any information or further information required under rules or bye-laws the Commissioner shall, by written order, either approve the site or refuse on one or more of the grounds mentioned in Section 243 to approve the site.

Period within which Commissioner is to grant or refuse to grant permission to execute work.

241. Within thirty days after the receipt of any application made under Section 237 for permission to execute any work or of any information or of documents or further information or documents required under rules or bye-laws the Commissioner shall, by written order, either grant such permission or refuse on one or more of the grounds mentioned in Section 243 or Section 244 to grant it:

Provided that the said period of thirty days shall not begin to run until the site has been approved under Section 240.

Reference to Standing Committee if Commissioner delays grant or refusal of approval or permission.

242. (1) If, within the period laid down in Section 240 or Section 241, as the case may be, the Commissioner has neither given nor refused his approval of a building site, or his permission to execute any work, as the case may be, the Standing Committee shall be bound, on the written request of the applicant, to determine by written order whether such approval or permission should be given or not.

(2) If the Standing Committee [does not within thirty days] from the receipt of such written request, determine whether such approval or permission should be given or not, such approval or permission shall be deemed to have been given and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

Grounds on which approval of site for, or license to construct or reconstruct, building may be refused.

243. The only grounds on which approval of a site for the construction or reconstruction of a building or permission to construct or reconstruct a building may be refused, are the following, namely:—

(i) that the work or the use of the site for the work or any of the particulars comprised in the site-plan, ground plan elevations, sections, or specification would contravene some specified provision of any law or some specified order rule, declaration or bye-law made under any law;

(ii) that the application does not contain the particulars or is not prepared in the manner required under rules or bye-laws;

(iii) that any of the documents referred to in Section 237 have not been signed as required under rules or bye-laws;

(iv) that any information or documents required by the Commissioner under the rules or bye-laws has or have not been duly furnished; and

(v) that streets or roads have not been made as required by Section 218.

[(vi) that the proposed building would be an encroachment upon Government or Municipal land;

(vii) that the site of such building does not abut on a street or a projected street, and there is no access to such building from any such street by a passage or pathway appertaining to such site and not less than 12 feet wide at any part.]

Whenever the Commissioner or the Standing Committee refuses to approve a site for a building, or to grant permission to construct or reconstruct a building, the reasons for such refusal shall be specifically stated in the order.

Special powers for suspending permission to construct buildings.

244. Notwithstanding anything contained in Section 243, if any street shown in the site-plan is an intended private street, the Commissioner may at his discretion refuse to grant permission to construct a building, until the street is commenced or completed.

Lapse of permission if not acted upon within one year.

245. If the construction or reconstruction of a building is not commenced within one year after the date on which permission was given to execute the work, the work shall not be commenced until a fresh application has been made and a fresh permission granted under this Chapter.

Inspection by Commissioner.

246. The Commissioner may inspect any building, during the construction or reconstruction thereof, or within one month from the date of receipt of the notice given under Section 103.

Power of Commissioner to require alteration of work

247. (1) If the Commissioner finds that the work—

(*a*) is otherwise than in accordance with the plans or specifications which have been approved, or

(*b*) contravenes any of the provisions of this Act or any rule, bye-law, order or declaration made under this Act, he may by notice require the ownerof the building within a period stated either —

(i) to make such alterations as may be specified in the said notice with the object of bringing the work into conformity with the said plans, specifications or provisions, or

(ii) to show cause why such alterations should not be made.

(2) If the owner does not show cause as aforesaid, he shall be bound to make the alterations specified in such notice.

(3) If the owner shows cause as aforesaid, the Commissioner shall by an order cancel the notice issued under sub-section (1), or confirm the same subject to such modifications as he may think fit.

Stoppage of work endangering human life.

248. Notwithstanding anything contained in any of the preceding Sections, the Commissioner may at any time stop the construction or reconstruction of any building if in his opinion the work in progress endangers human life.

Above provisions not applicable to huts

249. In Sections 237 to 248 the word 'buildings' does no include a hut.

Wells.

Application of certain Sections to wells.

250. The provisions of Sections 237, 238, 239, 245, 246, 247 and 248 shall so far as may be, apply to wells.

Huts.

Application to construct or reconstruct huts.

251. (1) Every person who intends to construct or reconstruct ahut, shall send to the Commissioner —

(*a*) an application in writing for permission to execute the work, and

(*b*) a site plan of the land.

(2) Every such application and plan shall contain the particulars and be prepared in the manner required under rules or bye-laws.

Prohibition against commencement of work without permission.

252. The construction or reconstruction of a hut shall not be commenced unless and until the Commissioner has granted permission for the execution of the work on an application sent to him under Section 251.

253. Within fourteen days after the receipt any application made under Section 251 for permission to construct or reconstruct a hut, or of any information or plan or further information of fresh plan required under rules or bye-laws, the Commissioner shall, by written order, either grant such permission or refuse on one or more of the grounds mentioned in Section 255 to grant it.

Period within which Commissioner is to grant or refuse to grant permission to execute the work.

254. (1) If within the period laid down in Section 253, the Commissioner has neither granted nor refused to grant permission to construct or reconstruct a hut, the Standing Committee shall be bound on the written request of the applicant, to determine by written order whether such permission should be granted or not.

Reference to Standing Committee if Commissioner delays grant or refusal of permission.

(2) If the Standing Committee does not, within thirty days from the receipt of such written request, determine whether such permission should be granted or not, such permission shall be deemed to have been granted; and the applicant may proceed to execute the work but not so as to contravene any of the provisions of this Act or any rules or bye-laws made under this Act.

255. The only grounds on which permission to construct or reconstruct a hut may be refused are the following namely:

Grounds on which permission to construct or reconstruct hut may be refused.

(i) that the work or the use of the site for the work would contravene some specified provision of any law or some specified rule bye-law, or declaration made under any law;

(ii) that the application for permission does not contain the particulars or is not prepared in the manner required under rules or bye-laws;

(iii) that any information or plan required by the Commissioner under rules or bye-laws has not been duly furnished; and

(iv) that streets or roads have not been made as required by Section 218.

[(v) that the land on which the hut is to be constructed or the street or streets on which such land abuts are not adequately drained, levelled or lighted, or

(vi) that the proposed hut would be an encroachment upon Government or Municipal land.."]

Whenever the Commissioner or Standing Committee refuses to grant permission to construct or reconstruct a hut, the reasons for such refusal shall be specifically stated in the order.

256. If the construction or reconstruction of any hut is not commenced within six months after the date on which permission was given to execute the work, the work shall not be commenced until a fresh application has been made and a fresh permission granted under this Chapter.

Lapse of permission if not acted upon within six months.

External walls—Alterations and additions.

257. The owner or occupier of any building adjoining a street shall keep the external part thereof in proper repair with lime-plaster or other material to the satisfaction of the Commissioner.

Maintenance of external walls in repair.

258. (1) The provisions of this Chapter and of any rules or bye-laws made under this Act relating to construction and reconstruction of buildings shall also be applicable to any alteration thereof or addition thereto :

Application of provisions to alterations and additions.

Provided that works of necessary repair which do not affect the position or dimensions of a building or any room there in shall not be deemed an alteration or addition for the purpose of this section.

(2) If any question arises as to whether any addition or alteration is a necessary repair not affecting the position or dimensions of a building or room, such question shall be referred to the Standing Committee, whose decision shall be final.

Powers of Commissioner.

Demolition or alteration of building or well-work unlawfully commenced, carried on, or completed.

259. (1) If the Commissioner is satisfied —

(i) that the construction or reconstruction of any building or well—

(*a*) has been commenced without obtaining the permission of the Commissioner or (where an appeal or reference has been made to the Standing Committee) in contravention of any order passed by the Standing Committee, or

(*b*) is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based, or

(*c*) is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or bye-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or bye-laws, or

(ii) that any alterations required by any notice issued under Section 247 have not been duly made, or

(iii) that any alteration of or addition to any building or any other work made or done for any purpose in, to, or upon any building has been commenced in breach of Section 258.

He may make a provisional order requiring the owner or the builder to demolish the work done, or so much of it as in the opinion of the Commissioner, has been unlawfully executed, or to make such alterations as may in the opinion of the Commissioner, be necessary to bring the work into conformity with the regulation rules, bye-laws, direction or requisition as aforesaid, or with the plans or particulars on which such permission or order was based, and may also direct that until the said order is complied with, the owner or builder shall refrain from proceeding with the building or well.

(2) The Commissioner shall serve a copy of the provisional order made under sub-section (1) on the owner of the building or well together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

(3) If the owner fails to show cause to the satisfaction of the Commissioner, the Commissioner may confirm the order, with any modification he may think fit to make [and such order shall then be binding on the owner.]

Exemptions.

Exemptions.

260. Any building constructed and used, or intended to be constructed and used, exclusively for the purpose of a plant house, meter-house, summer house (not being a dwelling house), poultry house, or aviary, shall be exempted from the provisions of this Chapter other than Section 236, provided the building be wholly detached from, and situated at a distance of at least ten feet from the nearest adjacent building.

CHAPTER XI—NUISANCES.

Dangerous buildings, trees and places.

Precautions in case of dangerous buildings.

261. (1) If any [structure] be deemed by the Commissioner to be in a ruinous state or dangerous to passers-by or to the occupiers of neighbouring structures, the Commissioner may by notice require the owner or occupier to fence off, take down, secure or repair such [structure] so as to prevent any danger therefrom.

(2) If immediate action is necessary the Commissioner may himself before giving such notice or before the period of notice expires fence off, take down, secure or repair such [structure] or fence off a part

of any street or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 409.

(3) If in the Commissioner's opinion the said [structure] is imminently dangerous to the inmates thereof, the Commissioner shall order the immediate evacuation thereof and any person disobeying may be removed by any Police Officer.

Precautions in case of dangerous trees.

262. (1) If any tree or any branch of a tree or the fruit of any tree be deemed by the Commissioner to be likely to fall and thereby to endanger any person [or structure] the Commissioner may by notice require the owner of the said tree to secure, lop or cut down the said tree so as to prevent any danger therefrom.

(2 If immediate action is necessary the Commissioner may himself before giving such notice or before the period of notice expires secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or take such temporary measures as he thinks fit to prevent danger, and the cost of so doing shall be recoverable from the owner of the tree in the manner provided in Section 409.

Precautions in case of dangerous tanks, wells, holes, etc.

263. (1) If any tank, pond, well, hole, stream, dam, bank or other place be deemed by the Commissioner to be for want of sufficient repair, protection or enclosure dangerous to the passers by, or to persons living in the neighbourhood, the Commissioner may by notice require the owner to fill in, remove, repair, protect or enclose the same so as to prevent any danger therefrom.

(2) If immediate action is necessary the Commissioner may himself before giving such notice or before the period of notice expires take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner in the manner provided in Section 409.

Precautions against fire.

264. (1) The Commissioner may by notice require the owner of any structure booth or tent partly or entirely composed of, or having any external roof, verandah, pandal [fence,] or wall partly or entirely composed of cloth, grass, leaves, mats or other inflammable materials to remove or alter such structure, booth, tent, roof, verandah, pandal [fence] or wall, or may grant him permission to retain the same on such conditions as the Commissioner may think necessary to prevent danger from fire.

(2) The Commissioner may by notice require any persons using any place for the storage for private use of timber , firewood, or other combustible things to take special steps to guard against danger from fire.

(3) Where the Commissioner is of opinion that the means of egress from any structure are insufficient to allow of safe exit in the event of fire, he may, with the sanction of the Standing Committee, by notice require the owner or occupier of the structure to alter or reconstruct any stair-case in such manner or to provide such additional or emergency stair-cases as he may direct; and when any structure, booth or tent is used for purposes of public entertainment he may require, subject to such sanction as aforesaid, that it shall be provided with an adequate number of clearly indicated exits so placed and maintained as readily to afford the audience ample means of safe egress, that the seating be so arranged as not to interfere with free access to the exits, and that the gangways, passages and stair-cases leading to the exits shall, during the presence of the public, be kept clear of obstructions.

Control over waters, etc.

Prohibition of construction of wells, tanks, etc., without the Commissioner's permission.

265. (1) No new tank, pond, cistern, fountain or the like shall be dug or constructed without the permission of the Commissioner.

(2) The Commissioner may grant permission, with or without conditions, or may refuse it.

(3) If any such work is begun or completed without such permission, the Commissioner may either —

(*a*) by notice require the owner or other person who has done such work to fil up or demolish such work in such manner as the Commissioner, shall direct, or

(*b*) grant permission to retain such work but such permission shall not exempt such owner from proceedings for contravening the provisions of sub-section (1).

Power to stop dangerous quarrying

266. If, in the opinion of the Commissioner, the working of any quarry, or the removal of stone, earth or other material from any place, is dangerous to persons residing in or having legal access to the neighbourhood thereof or creates or is likely to create a nuisance, the Commissioner may, with the approval of the Standing Committee, by notice, require the owner or person having control of the said quarry or place to discontinue working the same or to discontinue removing stone, earth or other material from such places or to take such order with such quarry or place, as he shall deem necessary for the purpose of preventing danger or of abating the nuisance arising or likely to arise therefrom.

Powers to order filling in of pools, etc., which are a nuisance and regulation of agriculture within City.

267. (1) If in the opinion of the Commissioner—

(*a*) any pool, ditch, tank, well, pond, bog, swamp, quarryhole, drain, cesspool, pit, water-course, or any collection of water ; or

(*b*) any land on which water may at any time accumulate,

is or is likely to become a breeding place of mosquitoes or in any other respect a nuisance, the Commissioner may by notice require the owner or person having control thereof to fill up, cover over, weed stock with larvicidal fish. treat with kerosene oil, drain or drain off the same in such manner and with such materials as the Commissioner shall direct, or to take such order with the same for removing or abating the nuisance as the Commissioner shall direct.

(2) If a person on whom a requisition is made under sub-section (1) to fill up, cover over or drain off a well [or other place] delivers to the Commissioner, within the time fixed for th ecompliance therewith, written objections to such requisition, the Commissioner shall report such objections to the Standing Committee and shall make further inquiry into the case, and he shall not institute any prosecution for failure to comply with such requisition except with the approval of the Standing Committee, but the Commissioner may, nevertheless, if he deems the execution of the work called for by such requisition to be of urgent importance, proceed in accordance with Section 402 and pending the Standing Committee's disposal of the question whether the said well shall be permanently filled up, covered over, or otherwise dealt with, may cause such well to be securely covered over so as to prevent the ingress of mosquitoes and in every such case the Commissioner shall determine, with the approval of the Standing Committee, whether the expenses of any work already done as aforesaid shall be paid by the owner or by the Commissioner out of the Municipal Fund or shall be shared and, if so, in what proportions.

(3) On the report of the Health Officer that the cultivation of any specified crop, or the use of any specified manure, or the irrigation of land in any place within the limits of the City is injurious to the public health, the Council may, with the previous sanction of Our Government, by public notice regulate or prohibit the cultivation, use of manure, or irrigation so reported to be injurious :

Provided that when such cultivation, or irrigation has been practised during the five years preceding the date of such public notice with such continuity as the ordinary course of husbandry admits of, compensation shall be paid from the Municipal Fund to all persons interested for any damage caused to them by such prohibition.

[268. (1) The Commissioner may by notice require the owner of or person having control over any private water-course, spring, tank, well, or other place the water of which is used for drinking, bathing or washing clothes to keep the same in good repair to cleanse it in such manner as the Commissioner may direct and to protect it from pollution caused by surface drainage or other matter in such manner as may be provided in the notice].

Power to order cleansing of insanitary private tank or well used for drinking.

(2) If the water of any private tank, well or other place which is used for drinking, [bathing or washing clothes as the case may be] is proved to the satisfaction of the Commissioner to be unfit for that purpose, the Commissioner may by notice require the owner or person having control thereof to—

(*a*) refrain from using or permitting the use of such water, or

(*b*) close or fill up such place or enclose it with a substantial wall or fence.

269. If it appears to the Commissioner that any public well or receptacle of stagnant water is likely to be injurious to health or offensive to the neighbourhood, he shall cause the same to be cleansed, drained, or filled up.

Duty of Commissioner in respect of public well or receptacle of stagnant water.

270. The Commissioner may regulate or prohibit the washing of animals, clothes, or other things or fishing in any river or estuary within the city in the interests of the public health.

Prohibition against or regulation of washing animals or clothes or fishing in river or estuary.

Prohibition against contaminating water-supply.

271. It shall not be lawful for any person to—

(*a*) bathe in any tank, reservoir conduit, fountain, well or other place set apart by the Corporation or by the owner thereof, for drinking purposes ; or

(*b*) wash or cause any animal or thing to be washed in any such place ; or

(*c*) throw, put or cause to enter into the water in any such place any animal, or thing whereby the water may be fouled or corrupted ; or

(*d*) cause or suffer to drain into or upon any such place, or cause or suffer anything to be brought thereinto or do anything, whereby the water may be fouled or corrupted.

Control over abandoned lands, untrimmed hedges, etc.

Untenanted building lands.

272. If any building or land, by reason of abandonment, disputed ownership or other cause remains untenanted and thereby becomes a resort of idle and disorderly persons or in the opinion of the Commissioner becomes a nuisance, the Commissioner may after due inquiry by notice require the owner or person claiming to be the owner to secure, enclose, clear or cleanse the same.

Removal of filth or noxious vegitation.

[273. The Commissioner may by notice require the owner or occupier of any building or land which appears to him to be in a filthy or unwholesome state or overgrown with any thick or noxious vegetation, trees or undergrowth injurious to health or offensive to the neighbourhood ot cleanse, clear or otherwise put the building or land in proper state or to clear away and remove such vegetation, trees or undergrowth within twenty-four hours or such longer period and in such manner as may be specified in the notice].

Abatement of nuisance from dust, smoke, etc.

[274. If in the opinion of the Commissioner the storage, dumping or deposit in any building or land of coal, charcoal, ashes, cinders, gunny bags, wool, cotton or any material, or the sifting, breaking, cutting or burning of such coal, charcoal, ashes, cinders or material or subjecting the same to any process, causes or is likely to cause nuisance to the inhabitants in the neighbourhood of such building or land, by the emanation of dust, floating particles, smoke, unwholesome smell or noise or otherwise, he may, by notice, require the owner or occupier of such building or land to take such steps as may be specified in the notice for the abatement of such nuisance.]

Fencing of buildings or lands and pruning of hedges and trees.

275. The Commissioner may by notice require the owner or occupier of any building or land near a public street to—

(*a*) fence the same to the satisfaction of the Commissioner ; or

(*b*) trim or prune any hedges bordering on the said street so that they may not exceed such height from the level of the adjoining roadway as the Commissioner may determine ; or

(*c*) cut and trim any hedges or trees overhanging the said street and obstructing it or the view of traffic or causing it damage ; or

(*d*) lower an enclosing wall or fence which by reason of its height and situation obstructs the view of traffic so as to cause danger.

Control over insanitary buildings.

Lime-washing and cleansing buildings

276. The Commissioner if it appears to him necessary for sanitary purposes so to do may by notice require the owner or occupier or any building to limewash or othewise cleanse the building inside and outside in the manner and within a period to be specified in the order.

Further powers with reference to insanitary buildings.

277. (1) Whenever the Commissioner considers—

(*a*) that any building or portion thereof is, by reason of its having no plinth or having a plinth of insufficient height or, by reason of the want of proper drainage or ventilation or by reason of the impracability of cleansing, attended with danger of disease to the occupiers thereof or to the inhabitants of the neighbourhood, or is for any reason likely to endanger the public health or safety, or

(*b*) that a block or group of buildings is for any of the said reasons, or by reason of the manner in which the buildings are crowded together, attended with such risk as aforesaid.

he may by notice require the owners or occupiers of such buildings or portions of buildings or at his option, the owners of the land occupied by such buildings, or portions of buildings to execute such works or to take such measures as he may deem necessary for the prevention of such danger.

(2) No person shall be entitled to compensation for damages sustained by reason of any action taken under or in pursuance of this Section save when a building is demolished in pursuance of an order made hereunder, or so far demolished as to require reconstruction, in which cases the Corporation shall make reasonable compensation to the owner thereof.

(3) When any building is entirely demolished under this Section and the demolition thereof adds to the value of other buildings in the immediate vicinity, the owners of such other buildings shall be bound to contribute towards the compensation payable to the owner of the first named building [in such roportion to the increased value acquired by their respective buildings as may be determined by the Commissioner.]

(4) When any building is so far demolished under this Section as to require reconstruction, allowance shall be made, in determining the compensation, for the benefit accruing to the premises from the improvement thereof.

Buildings unfit for human habitation.

278. (1) If any building, or portion thereof, intended for or used as a dwelling place appears to the Commissioner to be unfit for human habitation, he may apply to the Standing Commtitee to prohibit the further use of such building for such purpose, and the Standing Commttee

may, after giving the owner and occupiers thereof a reasonable opportunity of showing cause why such order should not be made, make a prohibitory order as aforesaid.

(2) When any such prohibitory order has been made, the Commissioner shall communicate the purport thereof to the owner and occupiers of the building and on expiry of such period as is specified in the notice, not being less than thirty days after the service of the notice, no owner or occupier shall use or suffer it to be used for human habitation until the Commissioner certifies in writing that the causes rendering it unfit for human habitation have been removed to his satisfaction, or the Standing Committee withdraws the prohibition.

(3) When such prohibitory order has remained in operation for three months the Commissioner shall report the case to the Standing Committee which shall thereupon consider whether the building should not be demolished. The Standing Committee shall give the owner not less than thirty days' notice of the time and place at which the question will be considered and the owner shall be entitled to be heard when the question is taken into consideration.

(4) If upon such consideration the Standing Committee is of opinion that the building has not been rendered fit for human habitation and that steps are not being taken with due diligence to render it so fit and that the continuance thereof is a nuisance or dangerous or injurious to the health of the public or to the inhabitants of the neighbourhood it shall record a decision to that effect, with the grounds of the decision, and the Commissioner shall in pursuance of the said decision by notice require the owner to demolish the building.

(5) If the owner undertakes to execute forthwith the works necessary to render the building fit for human habitation and the Commissioner considers that it can be so made fit, the Commissioner may postpone the execution of the decision of the Standing Committee, for such time not exceeding six months, as he thinks sufficient for the purpose of giving the owner an opportunity of executing the necessary works.

Abatement of over-crowding in dwelling-house or dwelling-place.

279. (1) If it appears to the Commissioner that any dwelling-house or other building which is used as a dwelling place, or any room in any such dwelling-house or building, is so overcrowded, as to endanger the health of the inmates thereof, he may apply to a magistrate to abate such over-crowding; and the magistrate, after such inquiry as he thinks fit to make, may, by written order, require the owner of the building or room, within a reasonable time, not exceeding four weeks, to be laid down in the said order, to abate such over-crowding by reducing the number of lodgers, tenants or ther inmates of the building or room, or may pass such other order as he may deem just and proper.

(2) The Standing Committee may declare what amount of superficial and cubic space shall be deemed for the purposes of sub-section (1) to be necessary for each occupant of a building or room.

(3) If any building or room referred to in sub-section (1) has been sub-let, the land-lord of the lodgers, tenants, or other actual inmates of the same shall, for the purposes of this Section, be deemed to be the owner of the building or room.

(4) It shall be incumbent on every tenant, lodger, or other inmates of the building or room, to vacate on being required by the owner so to do in obedience to any requisition made under sub-section (1).

General.

Power of Commissioner to use or sell materials of dangerous building taken down etc.

280. (1) When the Commissioner takes down any building or part thereof or cuts down any tree or hedge or shrub or part thereof or removes any fruit in virtue of his powers under this chapter or under Section 402, the Commissioner may sell the materials or things taken down or cut down or removed and shall in the case of sale apply the proceeds in or towards payment of the expenses incurred and pay any surplus accruing from such sale to the owner or other person entitled thereto on demand made within twelve months from the date of sale. If no such demand is made, such surplus shall be forfeited to the corporation.

(2) If after reasonable inquiry it appears to the Commissioner that there is no owner or occupier to whom notice can be given under any Section in this chapter he may himself take such order with the property mentioned in such section as may appear to him to be necessary and may recover the expense incurred by selling such property (not being land), or any portion thereof.

Limitation of compensation.

281. No person shall be entitled save as provided in Sections 267 and 277 to compensation for any damages sustained by reason of any action taken by a Municipal authority in pursuance of its powers under this Chapter.

CHAPTER XII—LICENCES AND FEES.

General Provision as to Licences.

Exemption of Government from taking out licences.

282. Nothing in this chapter shall be construed as requiring Our Government to take out a licence in respect of any place in the occupation or under the control of Our Government or in respect of any property belonging to Our Government.

Lodging Houses.

[283. (1) No person shall without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf,

keep any lodging house, eating house, tea-shop, coffee-house, cafe, restaurant, refreshment room, or any place, where the public are admitted for repose or for the consumption of any food or drink or any place where food is sold or prepared for sale]

Explanation.—'Lodging house' means a hotel, boarding house, choultry or resthouse other than a choultry or rest-house maintained by the Government or any place where casual visitors are received and provided with sleeping accommodation with or without food on payment.

(2) The Commissioner may at any time cancel or suspend any license granted under sub-section (1) if he is of opinion that the premises covered thereby are not kept in conformity with the conditions of such licence or with the provisions of any bye-law made under Section 366 relating to such premises whether or not the licencee is prosecuted under this Act]

Keeping of Animals [and Birds].

Prohibition in respect of keeping and feeding animals and birds.

284. No person shall—

(*a*) without the permission of the Commissioner, or otherwise than in conformity with the terms of such permission, keep pigs in any part of the City; or

(*b*) keep any animal [or brids] on his premises so as to be a nuisance or so as to be dangerous; or

(*c*) feed or permit to be fed on filth any animal, which is kept for dairy purposes or may be used for food.

Destruction of stray pigs and dogs.

285. If any dogs not taxed under Section 113 or pigs are found straying the same may be summarily destroyed by any person authorised in that behalf in writing by the Commissioner.

Licences for places in which animals are kept.

286. (1) The owner or occupier of any stable, veterinary infirmary stand, shed, yard or other place in which quadrupeds are kept or taken in for purpose of profit, shall in the first month of every year, or, in the case of a place to be newly opened, within one month before the opening of such place, apply to the Commissioner for a licence.

(2) The Commissioner, may, by an order and 'under such restrictions and regulations as he thinks fit, grant or refuse to grant such licence.

(3) No person shall, without or otherwise than in conformity with a licence, use any place [or allow any place to be used] for any such purpose.

General powers of control over stables cattle-sheds and cow houses.

287. (1) All stables, cattle-sheds and cow houses shall be under the survey and control of the Commissioner as regards their site, construction materials and dimensions.

(2) The Commissioner may by notice require that any stable, cattle-shed or cow house be altered, paved, drained, repaired, disinfected or kept in such a state as to admit of it being sufficiently cleaned, or be supplied with water, or be connected with a sewer, or be demolished.

(3) Every such notice shall be addressed to the owner or person having control of the stable, cattle-shed or cow-house,

(4) The expenses of executing any work in pursuance of any such notice shall be borne by the owner.

Power to direct discontinuance of use of building as a stable, cattle-shed or cow. house.

288. If any stable, cattle-shed or cow-house is not constructed or maintained in the manner required by or under this Act, the Commissioner may by notice direct that the same shall no longer be used as a stable, cattle shed or cowhouse. Every such notice shall state the grounds on which it proceeds.

[*Landing places. Cart stands etc.,*]

Provision of landing places, cart stands etc.

[289. (1) The Commissioner may construct or provide public landing places, halting places, cart-stands, cattle-sheds and cow houses and may charge and levy such fees for the use of the same as the Standing Committee may fix.]

[*Explanation*,—A cart-stand shall, for the purposes of this Act, include a stand for carriages including motor vehicles within the meaning of the Travancore Motor Vehicles Act, and animals.]

(2) A statement of the fees fixed by the Standing Committee for the use of each such place, shall be put up in English and Malayalam in a conspicuous part thereof.

(3) The Commissioner may farm out the collection of such fees for any period not exceeding three years at a time, on such terms and conditions as he may think fit.

Prohibition of use of public place or sides of public street as cart stand etc.

[290. Where the Commissioner has provided a public landing place, halting place, cart-stand, cattle-shed or cow-house, he may prohibit the use for the same purpose by any person within such distance thereof as may be determined by the Standing Committee, of any public place or the sides of any public street.]

[291. (1) If the fee leviable under sub-section (1) of Section 289 is not paid on demand, the person appointed to collect such fee may seize and detain such portion of the appurtenances of load of such cart, carriage, motor vehicle, or animal as will, in his opinion, suffice to defray the amount due; in the absence of any such appurtenances or load or in the event of their value being insufficient to defray the amount due, he may seize and detain the cart, carriage, motor vehicle, or animal.

Recovery of cart-stand fees etc.

(2) All property seized under sub-section (1) shall be sent within twenty-four hours to the Commissioner or to such person as he may have authorised to receive and sell such property and the Commissioner shall forthwith give notice to the owner of the property seized, or if the owner is not known or is not resident within the city, to the person who was in charge of such property at the time when it was seized or if such person is not found, give public notice that after the expiry of two days, exclusive of Sunday, from the date of service or publication of such notice, the property will be sold in auction at a place to be specified in the notice.

(3) If at any time before the sale has begun, the amount due on account of the fee, together with the expenses incurred in connection with the seizure, detention and proposed sale is tendered to the Commissioner or other person authorised as aforesaid, the property seized shall be forthwith released.

(4) If no such tender is made, the property or a sufficient portion thereof may be sold and the proceeds of the sale applied to the payment of—

(i) the amount due on account of the fee;

(ii) such penalty not exceeding the amount of the fee as the Commissioner may direct; and

(iii) the expenses incurred in connection with the seizure, detention and sale.

(5) If, after making the payments referred to in sub-section (4) there is any surplus sale proceeds or any property remaining unsold, the same shall be paid or delivered to the owner or other person entitled thereto.]

[292. (1) No person shall open a new private cart stand or continue to keep open a private cart stand unless he obtains from the Commissioner a licence to do so.

Licence for private cart stand.

(2) Applications for such licence shall be made by the owner of the place in respect of which the licence is sought not less than thirty days before such place is opened as a cart stand or not less than thirty days before the commencement of the year for which the licence is sought to be renewed, as the case may be.

(3) The Commissioner shall, as regards private cart stands already lawfully established and may, at his discretion, as regards new private cart stands, grant the licence applied for, subject to such regulations as to supervision and inspection and to such conditions as to conservancy as he may think proper, or he may refuse to grant any such licence for any new private cart stand. The Commissioner may, at any time for breach of the conditions thereof, suspend or cancel any licence which has been granted under this Section. The Commissioner may also modify the conditions of the licence to take effect from a specified date.

(4) When a licence is granted, refused, suspended, cancelled, or modified under this Section, the Commissioner shall cause a notice of such grant, refusal, suspension, cancellation or modification, in English and in Malayalam, to be posted in some conspicuous- place at or near the entrance to the place in respect of which the licence was sought or had been obtained.

(5) The Commissioner may levy for every licence granted under this Section a fee not exceeding six hundred rupees per annum :

Provided that no fee shall be levied in respect of a licence for a cart stand for the use of which no charge is made.

(6) Every licence granted under this Section shall expire at the end of the year for which it is granted.]

[*Carcasses of Animals.*]

Removal of carcasses of animals.

293. (1) The occupier of any premises in or on which any animal shall die or on which the carcass of any animal shall be found, and the person having the charge of any animal which dies in a street or in any open place, shall, within three hours after the death of such animal, or if the death occurs at night, within three hours after sunrise, either—

(*a*) remove the carcass of such animal to such receptacle, depot or place as may be appointed by the Commissioner in that behalf, or

(*b*) report the death of the animal to an officer of the Health Department of the division of the City in which the death occurred, with a view to his causing the same to be removed.

(2) When any carcass is so removed by the Health Department, a fee, for the removal, of such amount as shall be fixed by the Commissioner, shall be paid by the owner of the animal or, if the owner is not known, by the occupier of the premises in or upon which, or by the person in whose charge the animal died.

Places of public entertainment.

Prohibition of cinematograph and dramatic performance except in licensed premises.

294. No exhibition of pictures or other optical effects by means of a cinemato-graph or similar apparatus for the purpose of which inflammable films are used and no public musical or dramatic performance, pantomime or circus shall be given in the City elsewhere than in premises for which a licence has been granted by the Commissioner under this Section :

Provided that the provisions of this Section shall not apply to buildings belonging to or under the control of Our Government.

Purposes for which places within the limits of the City or within three miles thereof may not be used without licence.

[295. (1) No place within the limits of the City shall be used for any of the purposes mentioned in Schedule IV without a licence obtained from the Commissioner and except in accordance with the conditions specified therein.

(2) The Commissioner shall, if so required by the Council, publish a Notification in Our Government Gazette and in two or more local newspapers that any place at a distance within three miles of the limits of the City shall not be used for any one or more of the purposes mentioned in Schedule IV without a licence obtained from the Commissioner and except in accordance with the conditions specified therein :

Provided that no such Notification shall take effect—

(*a*) unless the sanction of Our Government has been obtained therefor ; and

(*b*) until the expiry of thirty days from the date of its publication in Our Government Gazette.

(3) The owner or occupier of every place for the use of which for any purpose a licence is required under sub-section (1) or sub-section (2) shall apply to the Commissioner for such licence not less than thirty days before the place is used for such purpose or within thirty days of the publication of the Notification under sub-section (2) in Our Government Gazette, as the case may be.

(4) Every application for a licence for the use of any place for the purpose of storing or selling explosives, timber or other combustible materials shall contain a statement showing the boundaries and measurements of such place.

(5) The Commissioner may grant such licence subject to such restrictions and regulations as may be specified by him therein or he may refuse to grant such licence.

(6) Every such licence shall expire at the end of the year for which it is granted, or at such earlier date as the Commissioner may, for special reasons, specify in the licence.

(7) Applications for renewal of such licences shall be made not less than thirty days before the commencement of the year for which the renewal is sought.

296. (1) Every person intending—

Application to be made for construction, establishment or installation of factory workshop or work-place in which steam or other power is to be employed

(a) to construct or establish any factory, workshop or work-place in which it is proposed to employ steam-power, water-power, or other mechanical power or electric power, or

(b) to instal in any premises any machinery or manufacturing plant driven by steam, water, electric or other power as aforesaid shall before beginning such construction, establishment or installation make an application in writing to the Commissioner for permission to undertake the intended work.

(2) The application shall specify the maximum number of workers proposed to be simultaneously employed at any time in the factory, workshop, work-place or premises and shall be accompanied by—

(a) a plan of the factory, workshop, work-place or premises prepared in such manner as may be prescribed by rules made in this behalf by Our Government; and

(b) such particulars as to the power, machinery, plant or premises as the Council may require by bye-laws made in this behalf.

(3) The Commissioner shall, as soon as may be after the receipt of the application—

(a) grant the permission applied for either absolutely or subject to such conditions as he thinks fit to impose, or

(b) refuse permission if he is of opinion that such construction, establishment or installation is objectionable by reason of the density of the population in the neighbour hood or is likely to cause a nuisance.

(4) Before granting permission under sub-section (3) the Commissioner—

(a) shall, if ten or more workers are proposed to be simultaneously employed at any time in the factory, workshop, work-place or premises, obtain the approval of the Inspector of Factories under the Factories Act, 1114, having jurisdiction in the City or if there is more than one such Inspector, of the Inspector designated by Our Government in this behalf by general or special order, as regards the plan of the factory, workshop, work-place or premises with reference to

(i) the adequacy of the provisions for ventilation and light;

(ii) the sufficiency of the height and dimensions of the rooms and doors;

(iii) the suitability of the exits to be used in case of fire; and

(iv) such other matters as may be prescribed by rules made by Our Government; and

(b) shall consult and have due regard to the opinion of the Health Officer as regards the suitability of the site of the factory, workshop, work-place or premises for the purpose specified in the application.

(5) All chimneys in connection with any such factory, workshop or work-place or any such machinery or manufacturing plant shall be of such height and dimensions as the Commissioner may determine.

(6) Ten or more workers shall not be simultaneously employed at any time in any factory, workshop, work-place or premises, unless the permission granted in respect thereof under sub-section (3) authorises such employment or unless fresh permission authorising such employment has been obtained from the Commissioner. Before granting such fresh permission, the Commissioner shall obtain the approval of the Inspector of factories, referred to in clause (*a*) of sub-section (4), as regards the plan of the factory, workshop, work-place or premises, with reference to the matters specified in that clause.

(7) The grant of permission under this section shall not be deemed to dispense with the necessity for compliance with the provisions of Sections 237 and 239 or Sections 251 and 252, as the case may be.

Explanation.—The word "worker" in sub-sections (2), (4) and (6) shall, in relation to any factory, workshop, work-place or premises, have the same meaning as in the Factories Act, 1114.

Commissioner may issue directions for abatement of nuisance caused by steam or other power.

297. (1) If, in any factory, workshop or workplace in which steam-power, waterpower or other mechanical power or electric power is used, nuisance is in the opinion of the Commissioner caused by the particular kind of fuel used or by the noise or vibration created, he may issue such directions as he thinks fit for the abatement of the nuisance within a reasonable time to be specified for the purpose.

(2) If there has been wilful default in carrying out such directions or if abatement is found impracticable, the Commissioner may—

(a) prohibit the use of the particular kind of fuel, or

(*b*) prohibit the working of the factory, workshop, or workplace altogether until such directions have been carried out or between the hours of 6 P. M. and 6 A. M. or during any particular time or times between such hours.

298. Whenever it shall appear to the Commissioner that any factory, workshop, work-place or any building or place in which steam, water or other mechanical power or electric power is used, is not kept in a cleanly state or is not ventilated in such a manner as to render harmless as far as practicable any gas, vapour, dust or other impurity generated in the course of the work carried on therein which in the opinion of the Commissioner is a nuisance or is so over-crowded while work is carried on as to be dangerous or injurious in the opinion of the Commissioner to the health of the persons employed therein, or that any engine, millgearing, hoist or other machinery therein is so fixed or so insecurely fenced as to be dangerous to life or limb, the Commissioner may by written notice require the owner of such factory, work-shop, work-place or other building or place to take such order as he thinks fit for putting and maintaining the said factory, work-shop, work-place or other building or place in a cleanly state or for ventilating the same or for preventing the same from being over-crowded or for preventing danger to life or limb from any engine, millgearing, hoist or other machinery therein.

Power of Commissioner to require owner of factory, work-shop etc. to put and maintain the factory, work-shop etc in a cleanly state

Explanation. Nothing in this Section shall be deemed to affect any of the provisions of the Travancore Boilers Act, 1112, or to authorise the Commissioner to issue any order relating to the fixing or fencing of any engine, mill-gearing, hoist or other machinery in any factory to which the provisions of the Factories Act 1114, are applicable.

299. Whenever it shall appear to the Commissioner that any factory, workshop or work-place or any building or any place in which steam, water or other mechanical or electric power is employed, is or is likely to become by reason of the employment of such power or by noise or by any gas, vapour, smoke, vibration, dust or other impurity generated in the course of the work carried on in such place or by any other cause, a nuisance or danger to the life, health or property, of persons in the neighbourhood he may by written notice require the owner or occupier of such factory, workshop, workplace, building or place to discontinue the use of such factory or place for any of the purposes that may be specified in such notice.

Power of Commissioner to require owner or occupier of factory etc. to discontinue the use of such factory etc.

300. (1) The Commissioner or any person authorised by him in this behalf may enter any factory, workshop or work-place:—

Commissioner may enter any factory etc.

(*a*) at any time between sunrise and sunset,

(*b*) at any time when any industry is being carried on, and

(*c*) at any time by day or night if he has reason to believe that any offence is being committed against Section 296, 297, 298 or 299.

(2) No claim shall lie against any person for any damage or inconvenience necessarily caused by the exercise of powers under this section or by the use of the force necessary for the purpose of effecting an entrance under this section.

Powers of Government to pass orders or give directions to the Commissioner.

301. Our Government may either generally or in any particular case make such order or give such directions as they may deem fit in respect of any action taken or omitted to be taken under Section 296, 297, 298 or 299.]

Washing and Bathing.

Provision of places for bathing and for washing animals.

302. The Council shall set apart places for use by the public for bathing purposes and for washing animals

Provision of public wash-house.

[303. (1) The Commissioner may construct or provide and maintain public bathing-houses, public wash-houses or places for the washing of clothes, and may charge and levy such rents and fees for the use of any such bathing-house, wash-house or place as the Standing Committee may determine. Such rents and fees shall be recoverable in the same manner as the property tax.]

(2) The Commissioner may farm out the collection of such rents and fees for any period not exceeding three years at a time on such terms and conditions as he may think fit.

(3) If a sufficient number of public wash-houses or places be not maintained under sub-section (1), the Commissioner may without making any charge therefor appoint suitable places for the exercise by washermen of their calling.

[(4) In public wash-houses, the clothes of persons suffering from infectious diseases and of persons residing in the premises occupied by the persons suffering from such diseases shall be washed separately in a separate block wherever set apart for the purpose and shall be washed by such methods as the Commissioner may lay down in that behalf.]

Prohibition against washing by washermen at unauthorised place.

304. (1) The Commissioner may by public notice prohibit the washing of clothes by washermen in the exercise of their calling, either within the City or outside the City within three miles of the boundary thereof except at —

(*a*) public wash houses or places maintained or provided under Section 303 ; or

(*b*) such other places as he may appoint for the purpose.

(2) When any such prohibition has been made, no person who is by calling a washerman shall, in contravention of such prohibition, wash clothes, except for himself or for personal and family service or for hire on and within the premises of the hirer, at any place within or without Municipal limits other than a public wash-house or a place maintained or appointed under this Act :

Provided that this Section shall apply only to clothes washed within or to be brought within the city.

Slaughter-houses.

Provision for Municipal slaughter-houses

[305. (1) The Counncil shall provide a sufficient number of places for use as Municipal slaughter-houses and the Commissioner, may charge and levy such rents and fees for their use as the Standing Committee may determine. Such rents and fees shall be recoverable in the same manner as the property tax.]

(2) The Commissioner may farm out the collection of such rents and fees for any period not exceeding three years at a time on such terms and conditions as he may think fit.

(3) Municipal slaughter-houses may be situated within or, with the sanction of Our Government without the City.

Licence for slaughter houses.

[306. (1) The owner of any place within the limits of the city or at a distance within three miles of such limits which is used, as a slaughter- house for the slaughtering of animals or for the skinning or cutting up of carcasses shall, not less than thirty days before the commencement of the year for which the licence is sought or in the case of a place to be newly opened, not less than one month before the opening of the same, apply to the Commissioner for a licence :

Provided that this sub-section shall not take effect in any area outside the limits of the City except with the previous sanction of Our Government.]

(2) The Commissioner may by an order, and subject to such restrictions and regulations as to supervision and inspection as he thinks fit, grant or refuse to grant such licence.

Slaughter of animals during festivals and ceremonies.

307. The Commissioner may allow any animal to be slaughtered in such places as he thinks fit on occasions of festivals and ceremonies or as a special measure.

308. No person shall slaughter within the city [except in a municipal or licenced slaughter-house] any cattle. horse, sheep, goat or pig for sale or food or skin or cut up any carcass without or otherwise than in conformity with a licence from the Commissioner or dry or permit to be dried any skin in such a manner as to cause a nuisance.

Slaughter of animals for sale of food.

309, The Comm'ssioner may authorise any person to slaughter without licence and without the payment of any fee any animal for the purpose of a religious ceremony.

Slaughter of animals for religious ceremony

The Milk Trade.

[310. (1) No person shall without or otherwise than in conformity with a licence from the Commissioner—

Regulation of milk trade.

(*a*) carry on or be employed in the trade or business of a dealer or importer or seller or hawker of milk or dairy produce within the City;

(*b*) use any place in the City for the sale of milk or dairy produce:

Provided that no such licence shall be given to any person who is suffering from a dangerous disease:

Provided further that such licence shall be deemed to have been suspended while the person to whom it is granted is suffering from a dangerous disease.

(2) Such licence may be refused or may be granted either unconditionally or on such conditions as the Commissioner may deem necessary. Such conditions may relate to the construction, ventilation, conservancy, supervision and inspection of the premises whether within or without the limits of the City where the animals from which the milk-supply is derived are kept.]

Markets. Butchers' Shops etc.

311. All markets which are acquired, constructed, repaired or maintained out of the Municipal Fund shall be deemed to be public markets.

Public markets.

Powers of Municipal authorities in respect of public markets.

312. (1) The Council may provide places for use as public markets.

[(2) The Commissioner may in any public market charge and levy any one or more of the following fees at such rates as the Standing Committee may determine and may place the collection of such fees under the management of such persons as may appear to him proper or may farm out such fees on such terms and subject to such conditions as he may deem fit—

(*a*) fees for the use of, or for the right to expose goods for sale, in such markets;

(*b*) fees for the use of shops, stalls, pens or stands in such markets;

(*c*) fees on vehicles or pack-animals carrying or on persons bringing, goods for sale in such markets;

(*d*) fees on animals brought for sale into, or sold in, such markets; and

(*e*) licence fees on brokers, commission agents, weighmen and measurers practising their calling in such markets.

(3) Such fees shall be recoverable in the same manner as the property tax.

(4) The Council may, with the sanction of Our Government, close any public market or part thereof.]

[313. (1) No person shall, without the permission of the Commissioner, or if the fees have been farmed out, of the farmer, sell or expose for sale any animal or article within any public market.

(2) Any person who contravenes sub section (1) or any condition of the licence or any regulation made under Section 321 or any bye-law made under Section 386 or who commits default in payment of the fees leviable under Section 312 may after three clear days' notice be summarily removed from such market by any Municipal officer or servant and any lease or tenure which any person may possess may be terminated for such period and from such date as the Commissioner may determine without prejudice to the legal rights of the Corporation to prosecute the person or to recover the fees leviable under Section 312 and the expenses, if any which the corporation may incur in such removal.]

Establishment of private markets.

314. (1) The Council shall determine whether the establishment of new private markets for the sale of or for the purpose of exposing for sale animals intended for human food or any article of human food shall be permitted in the City or any specified part of the city,

[(2) (*a*) No person shall establish any new private market without or otherwise than in conformity with a licence issued by the Commissioner with the sanction of the Standing Committee which shall be guided in giving or refusing sanction, by the resolutions of the Council passed under sub-section (1).

(*b*) Applications for such licence shall be made by the owner of the place in respect of which the license is sought not less than thirty days before such place is opened as a market.]

315. (1) No person shall without or otherwise than in conformity with an annual licence granted by the Commissioner in this behalf continue to keep open a private market. Application for the renewal of the license shall be made [not less than 30 days before the commencement of the year for which license is sought.]

Licensing of private markets.

(2) The Commissioner may by an order, subject to [such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, water supply, width of paths and ways, weights and measures to be used and rents and fees to be charged in such markets as he thinks fit]

(a) grant or refuse to grant or renew such license, or

(b) withhold the licence until the owner or occupier executes such works as may be specified in the order :

Provided that the Commissioner shall not refuse or withhold such licence for any cause other than the failure of the owner or occupier thereof to comply with some provision of this Act or some regulation made under Section 321 or some bye-law made under Section 366, or without the approval of the Standing Committee,

(3) The Commissioner, shall cause a notice that the market has been so licensed to be affixed in English and in Malayalam in some conspicuous place at or near the entrance to every such market.

(4) The Commissioner, if a licence has been refused or with held as aforesaid, shall cause a notice of such refusal or withholding to be affixed in English and Malayalam to some conspicuous place at or near the entrance to the premises,

[316. Every licence granted under Section 314 or Section 315 shall expire at the end of the year for which it is granted.]

Period of licence.

[317. When a license granted under Section 315 permits the levy of any fee or fees of the nature specified in sub-section 2 of Section 312 a fee not exceeding fifteen per cent. of the gross income of the owner from the market in the preceding year shall be charged and levied by the Commissioner for such license.]

Licence fee for private markets

318. It shall not be lawful for any persons to sell or expose for sale any animal or article in any unlicensed private market.

Sale in unlicensed private market.

319. The Commissioner may by notice require the owner, occupier or farmer of any private market for the sale of any animal or article of food, to—

Powers of Commissioner in respect of private markets.

(a) construct approaches, entrances, passages, gates, drains and cess-pits for such market and provide it with latrines [of such description and on such position and number as the Commissioner may think fit.]]

(*b*) roof and pave the whole or any portion of it or pave any portion of the floor with such materials as will in the opinion of the Commissioner secure imperviousness and ready cleansing;

(*c*) ventilate [and light] it properly and provide it with supply of water;

(*d*) provide passages of sufficient width between the stalls [and make such alterations in the stalls, passages, shops, doors, or other parts of the market as the Commissioner may direct,] and

(*e*) keep it in a cleanly and proper state and remove all filth and rubbish there from.

Suspension or refusal of licence in default.

320. (1) If any person, after notice given to him in that behalf by the Commissioner fails within the period and in the manner laid down in the said notice to carry out any of the works specified in Section 300 the Commissioner may with the sanction of the Standing Committee, suspend the license of the said person, or may refuse to grant him a license until such works have been completed.

(2) It shall not be lawful for any person to open or keep open any such market after such suspension or refusal.

Power of Commissioner to make regulations for markets, bazaars, slaughter-houses, and places set apart of sacrifice of animals.

321. The Commissioner may, with the approval of the Standing Committee, make rules, not inconsistent with any provision of this Act or of any bye-law made under Section 365—

(*a*) for preventing nuisances or obstruction in any market-building, market place, bazaar or slaughter house, or in the approache thereto, or in any of the roads, paths or ways in any market or bazaar;

(*b*) fixing the days and the hours on and during which any market, bazaar or slaughter house may be held or kept open for use;

(*c*) for keeping every market-building, market-place, bazaar, slaughter-house and place specified under Section 290 in a cleanly and proper state, and for removing filth and rubbish thereform;

(*d*) requiring that any market-building, market place, bazaar, slaughter-house or place specified as aforesaid be properly ventilated and be provided with a sufficient supply of water;

(*e*) requiring that in market-building, market-places and bazaars, passages be provided between the stalls of sufficient width for the convenient use of the public; and

(*f*) requiring that in market-buildings, market places and bazaars separate areas be set apart for different classes of articles.

[322. (1) The Council may acquire the rights of any person to hold private market in any place and to levy fees therein. The acquisition shall be made under the Land Acquisition Act, XI, of 1089, and such rights shall be deemed to be land for the purpose of that Act.

Acquisition of rights of private persons to hold private markets.

(2) On payment by the Council of the compensation awarded under the said Act, in respect of such property and any other charges incurred in acquiring it, the rights of such person to hold such market and to levy fees therein shall vest in the Council.]

[323. The person in charge of market shall prevent the entry therein of, and shall expel therefrom, any person suffering from leprosy in whom the process of ulceration has commenced or from any infectious or contagious disease who sells or exposes for sale therein any article or, who, not having purchased the same, handles any articles exposed for sale therein and he may expel therefrom any person who is creating a disturbance therein.]

Duty of expelling lepers, etc., from markets and powers to expel disturbers.

324. (1) No person shall, without, or otherwise than in conformity with a licence from the Commissioner carry on the trade of a butcher, fishmonger or poulterer or use any place for the sale of flesh or fish [or poultry] intended for human food:

Butcher's, fishmonger's and poulterer's licence.

[(a) in any place within the limits of the City; or

(b) in any place within three miles of such limits and not included in any Municipality constituted under any law for the time being in force relating to Municipalities.]

Provided that no licence shall be required for a place used for the selling or storing for sale of preserved flesh or fish contained in air-tight and hermetically sealed receptacles.

"(2) [The Commissioner may by an order and subject to such restrictions as to supervision and inspection as he thinks fit, grant or refuse to grant such license.

(3) Every such licence shall expire at the end of the year for which it is granted or at such earlier date as the Commissioner may, for special reasons, specify in the licence."]

325. The Commissioner may, with the sanction of the Standing Committee, prohibit by public notice or license or regulate the sale or exposure for sale, of any [animal, bird,] or articles in or on any public street or part thereof.

Power to prohibit or regulate sale of article in public streets

"326. [If any question arises whether any place where persons assemble for the sale or purchase of articles of food or clothing, or live-stock or poultry, of cotton, ground nut or other industrial crops or of any other raw or manufactured products, is a market or not, the Commissioner shall make a reference to Our Government and the decision of Our Government on the question shall be final."]

Decision of disputes as to whether places are markets

Inspection of places for sale: etc.

327. It shall be the duty of the Commissioner to make provision for the constant and vigilant inspection of animals, carcasses, meat poultry, game flesh, fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter, oil and any other articles exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale or of preparation for sale.

Duty of Commissioner, to inspect

328. (1) The Commissioner or any person authorised by him in writing for the purpose may without notice enter any slaughter-house or any place where animals, poultry or fish intended for food are exposed for sale or where articles of food are being manufactured or exposed for sale at any time by day or night, when the slaughter, exposure for sale or manufacture is being carried on and inspect the same and any utensil or vessel used for manufacturing, preparing or containing any such article.

Powers of Commissioner for purposes of inspection.

(2) If the Commissioner or any person so authorised by him has reason to believe that in any place any animal intended for human food is being slaughtered or any carcass is being skinned or cut up or that any food is being manufactured, stored, prepared packed, cleansed, kept or exposed for sale, or sold without, or otherwise, than in conformity with a licence he may enter any such place without notice, at any time, by day or night for the purpose of satisfying himself whether any provision of law, bye-laws or regulations or any condition of a licence is being contravened.

(3) No claim shall lie against the Commissioner or any person acting under his authority or the Corporation for any damage or inconvenience caused by the exercise of powers under this Section or by the use of any force necessary for effecting any entry into any place under this Section.

(4) In any legal proceedings in respect of powers exercised under this Section in which it is alleged that any animals, poultry, fish or articles of food were not kept, exposed, hawked about, manufactured, prepared, stored packed, or cleansed for sale, or were not intended for human food, the burden of proof shall lie on the party so alleging.

329. No person shall in any manner whatsoever obstruct the Commissioner or person duly authorised by him in the exercise of his powers under the last preceding Section.

Preventing inspection by Commissioner.

330. If any animal, poultry or fish intended for food appears to the Commissioner or to a person duly authorised by him, to be diseased, or any food appears to him to be noxious, or if any vessel or utensil used in manufacturing, preparing or containing any article of food appears to be of such kind or in such state as to render the article noxious, he may seize or carry away or secure [such animal, poultry, fish, article utensil or vessel in order that the same may be dealt with as hereinafter provided.]

Power of Commissioner to seize diseased animal, noxious food etc.

Explanation.—Meat subjected to the process of blowing shall be deemed to be noxious.

331. No person shall remove or in any way interfere anything secured under the last preceding Section.

Removing or interfering with articles seized.

332. (1) When any animal, poultry, fish or other article of food [or any utensil or vessel] is seized under Section 330, it may, with the consent of the owner or person in whose possession it was found, be forthwith destroyed and if the article is perishable, without such consent.

Power to destroy article seized.

(2) Any expenses incurred in destroying anything under sub-section (1) shall be paid by the owner or person in whose possession such thing was at the time of its seizure.

333. (1) Articles of food, animals, poultry, fish, utensils, or vessels, seized under Section 330 and not destroyed under Section 332 shall as soon as possible be produced before a Magistrate.

Production of articles, etc., seized before Magistrate and powers of Magistrate to deal with them.

(3) Whether or not complaint is laid before the Magistrate of any offence under the Travancore Penal Code or under this Act, if it appears to the Magistrate on taking such evidence as he thinks necessary that any such animal, poultry or fish is deseased, or any such srticle is noxious or any such utensil or vessel is of such kind or in such state as is described in Section 330 he may order the same -

(*a*) to be forfeited to the Corporation, or

(*b*) to be destroyed at the charge of the owner or person in whose possession it was at the time of seizure, in such manner as to prevent the same being again exposed or hawked about for sale, or used for human food or for the manufacture or preparation of, or for containing, any such article as aforesaid.

Disposal of the Dead.

334. If it appears to the Commissioner that there is no owner or person having the control of any place used for burying, burning or otherwise disposing of the dead, he shall assume such control and register such place, or may, with the sanction of the Council, close it.

Registration or closing of ownerless places for disposal of dead.

335. (1) No new place for the disposal of the dead, whether public or private, shall be opened, formed, constructed, or used unless a licence has been obtained from the Commissioner on application.

Licensing of places for disposal of dead.

(2) Such application for a licence shall be accompanied by a plan of the place to be registered, showing the locality, boundaries and extent thereof, the name of the owner or person or community interested therein, the system of management, and such further particulars as the Commissioner may require.

(3) The Commissioner may, with the sanction of the Council

(*a*) grant or refuse a licence, or

(*b*) postpone the grant of a licence until his objections to the site have been removed or any particulars called for by him have been furnished.

336. (1) The Council may, and shall, if no sufficient provision exists, provide places to be used as burial or burning grounds or crematoria, either within or [with the sanction of Our Government] without the limits of the City and may charge [and levy] rents and fees for the use thereof.

Provision of burial and burning grounds and crematoria within or without the City by the Corporation.

(2) If the Corporation provide any such place without the limits of the City, all the provisions of this Act and all bye-laws framed under this Act for the management of such places within the City shall apply to such place and all offences against such provisions or bye-laws shall be cognizable by the Magistrates as if such place were within Municipal limits.

337. (1) A book shall be kept at the Corporation Office in which the places registered, licensed or provided under Section 334 Section 335 or Section 336 and all such places registered, licensed, or provided before the commencement of this Act, shall be recorded, and the plans of such places shall be filed in such office.

Register of registered licensed and provided places and prohibition of use of other places

(2) Notice that such place has been egistered, licensed or provided as aforesaid shall be affixed in English and in Malayalam to some conspicuous place at or near the entrance to the burial or burning ground or other place as aforesaid.

(3) The Commissioner shall annually publish a list of all places registered, or provided as aforesaid or provided by Our Government.

(4) No person shall bury, burn or otherwise dispose of any corpse except in a place which has been registered, licensed or provided as aforesaid:

Provided however that it shall be lawful for the Commissioner to permit any burial or burning in private ground in individual cases.

Report of burials and burnigs.

338. The person having control of a place for disposing of the dead shall give information of every burial; burning or other disposal of a corpse at such place to the officer, if any, appointed by the Commissioner in that behalf.

Prohibition against making up vault or grave in place of worship.

339. No person shall make a vault or grave, or cause any corpse to be buried within the walls of or underneath any place of public worship:

Provided that in the case of an existing vault, the Commissioner may, subject to the general or special orders of Our Government, authorise the burial in such vault of near relatives of the family to whom it belongs.

Prohibition against use of burial and burning grounds dangerous to health or overcrowded with graves.

340 (1) If the Commissioner is of opinion

(*a*) [that any registered or licensed place for the disposal of the dead or any place provided for such disposal by the council or by Our Government is in such a state or situation as to be or to be likely to become dangerous to the health of persons living in the neighbourhood thereof or, "]

(*b*) that any burial ground is overcrowed with graves,

and if in the case of a public burial or burning ground or other place as aforesaid another convenient place duly authorised for the disposal of the dead exist or has been provided for the persons who would ordinarily make use of such place.

he may, with the consent of the Council and the previous sanction of Our Government, give notice that it shall not be lawful, after a period to be named in such notice, to bury, burn, or otherwise dispose of any corpse at such place.

(2) Every notice given under sub-section (1) shall be published and a translation thereof in Malayalam shall be affixed to some part of such place.

(3) After the expiry of the period named in such notice it shall not be lawfu to bury, burn, or otherwise dispose of a corpse at such place except with the permission of the Commissioner.

[" 341. No person shall

Prohibition in respect of corpses.

(a) bury or cause to be buried any corpse or part thereof in a grave whether dug or constructed of masonry or otherwise in such manner that the surface of the coffin or the surface of the body where no coffin is used, is at a less depth than five feet from the surface of the ground; or

(b) build or dig or cause to be built or dug any grave in any burial ground at a less distance than two feet from the margin of any other existing grave; or

(c) without the sanction in writing of the Commissioner or an order in writing of a Magistrate, reopen a grave already occupied ;or

(d) convey or cause to be conveyed a corpse or part thereof to any burial or burning ground, and not cause the burial or burning of the same to commence within six hours after its arrival at such place; or

(e) when burning or causing to be burnt a corpse or part thereof permit the same or any part thereof or its clothing to remain without being completely reduced to ashes; or

(f) carry through any street a corpse or part thereof not decently covered or

(g) while carrying a corpse or part thereof within the City leave the same in ornear any street for any purpose whatever; or

(h) remove, otherwise than in a closed receptacle, any corpse or part thereof, kept or used for the purpose of dissection.]

Fencing etc., of private burial ground.

[342. The owner of or other person having control over any private burial ground shall fence and maintain the same properly to the satisfaction of the Commissioner]

Grave-digger's license.

343. No person shall discharge of the office of a grave digger or other attendant at a public place for the disposal of the dead (other than a place provided by Our Government) unless he has been licensed in that behalf by the Commissioner.

CHAPTER XIII—VITAL STATISTICS AND THE PREVENTION OF DISEASE.

Vital Statistics.

Compulsory registration of vital statistics.

344, (1) The Corporation shall register all births and deaths occurring in the City.

(2) Information of births and deaths shall be given and their registration shall be made and enforced in the prescribed manner.

Dangerous Diseases.

345. Our Government may, by notification, declare any epidemic, endemic or infectious disease [not already specified in sub-clause (a) of Section 3, clause (16)] to be a "dangerous disease" for the purpose of this Act.

Power to notify "dangerous disease"

346. (1) If any medical practitioner becomes cognizant of the existence of any dangerous disease in any private or public dwelling in the City, he shall inform the Commissioner, the Health Officer, or the Sanitary Inspector of the division, with the least practicable delay.

Obligation of medical practitioner or owner or occupier to report dangerous disease.

(2) The information shall be communicated in such form and with such details as the Commissioner may require.

(3) The Commissioner may direct the compulsory notification by the owner or occupier of every house within the Municipal limits, during such period and to such officer as the Commissioner may prescribe, of all deaths from or occurr ences of dangerous diseases in his house.

Explanation—Sub sections (1) and (2) shall apply to a hakim or a vaidyan.

347. The Commissioner [or Health Officer] may, at any time by day or by night without notice, or after giving such notice as may appear to him reasonable, inspect any place in which any dangerous disease is reported or suspected to exist, [and except in cases where he is satisfied that adequate arrangements have been made or exist for the proper care and treatment of the person who is suffering or is suspected to be suffering from any dangerous disease, remove or cause to be removed such person to any Government or Municipal medical institution intended for the treatment of patients suffering from such disease, and take such other measures], as he may think fit to prevent the spread of such disease.

Power of entry into suspected places.

Prevention of Infection.

348. The Commissioner may provide and maintain suitable conveyances for the free carriage of persons suffering from any dangerous disease.

Provision of conveyances for carriage of patients.

349. (1) If, in the case of any person in a hospital, it appears to the officer in charge of it that such person is suffering from a dangerous disease.

Power to order removal of patients to hospital.

or if, in the case of any other person, it appears to the Health Officer that such person is suffering from a dangerous disease, and

(*a*) is without proper lodging or accommodation, or
(*b*) is lodged in a place occupied by more than one family, or
(*c*) is without medical supervision directed to prevent the spread of the disease, and if such officer in-charge or the Health Officer, as the case may be, considers,

that such person should be removed to a hospital or other place at which patients suffering from such disease are received from medical treatment,

he may remove such person or cause him to be removed tothe said hospital or place;

Provided that, if any such person is a female, she shall not be removed to anysuch hospital or place unless the same has accommodation of a suitable kind set apart from the portions assigned to males.

(2) If any female, who, according to custom, does not appear in public, be removed to any hospital or place under sub-section (1);

(*a*) the removal shall be effected in such a way as to preserve her privacy:
(*b*) special accommodation suited to such custom shall be provided for her in such hospital or place; and
(*c*) a female relative shall be allowed to remain with her.

(3) Whoever obstructs the removal of a person under this Section shall be deemed to have committed an offence punishable under Section 267 of the Travancore Penal Code.

Disinfection of buildings and articles.

350. (1) If the Commissioner [or Health Officer] is of opinion that the cleansing or disinfecting of a building or of any part thereof, or of any article therein which is likely to retain infection, will tend to prevent or check the spread of any dangerous disease, he may by notice require the owner or occupier to cleanse or disinfect the same, in the manner and with in the time specified in such notice.

(2) The owner or occupier shall within the time specified as aforesaid comply with the terms of the notice.

(3) If the Commissioner [or Health Officer] considers that immediate action is necessary, or that the owner or occupier is, by reason of poverty or otherwise, unable effectually to comply with his requisition, the Commissioner [or Health Officer] may himself without notice cause such building or article to be cleansed or disinfected, and for this purpose may cause such article to be removed from the building or premises, and the expenses incurred by the Commissioner [or Health Officer] shall be recoverable from the said owner or occupier in cases in which such owner or occupier is, in the opinion of the Commissioner [or Health Officer] not unable by reason of poverty effectually to comply with such requisition.

Destruction of huts and sheds when necessary.

351. (1) If the Commissioner is of opinion that the destruction of any hut or shed is necessary to prevent the spread of any dangerous disease, he mayafter giving to the owner or occupier of such hut or shed such previous notice of his intention as may in the circumstances of the case appear to him reasonable, take measures for having such hut or shed and all the materials thereof destroyed.

(2) Compensation shall be paid by the Commissioner to any person who sustains substantial loss by the destruction of any such hut or shed; but, except, as so allowed by the Commissioner, no claim for compensation shall lie for any loss or damage caused by any exercise of the power conferred by this Section.

Provision of places for disinfection and power to destroy infected articles.

352. (1) The Commissioner may—

(*a*) provide proper places with all necessary attendants and apparatus for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection [from any dangerous disease.]

(*b*) cause conveyances, clothing, bedding or other articles brought for disinfection to be disinfected free of charge or subject to such charges as may be approved by the Standing Committee.

(2) The Commissioner [shall from time to time] notify places at which conveyances, clothing, bedding or other articles which have been exposed to infection [from any dangerous disease] shall be washed [and disinfected] and no person shall wash [ordisinfect] any such article at any place not so notified.

(3) The Commissioner may direct any clothing, bedding or other articles likely to retain infection [from any dangerous disease] to be disinfected or destroyed, and may give compensation for any article destroyed under this sub-section.

Prohibition against transfer of infected articles.

353. No person shall, without previously disinfecting it, give, lend, let, hire, sell, transmit, or otherwise dipose of any article which he knows or has reason to know has been exposed to infection from any dangerous disease:

Provided that nothing in this Section shall appyl to a person who transmits with proper precautions any article for the purpose of having it disinfected.

Prohibition against infected person carrying on occupation.

[354. If any person knows or has been certified by the Health officer or a medical officer in the service of Our Government or of the Corporation that he is suffering from a dangerous disease he shall not engage in any occupation or carry on any trade or business.]

355. (1) No person who is suffering from any dangerous disease shall enter a public conveyance without previously notifying to the owner or driver or person in charge of such conveyance that he is so suffering.

Prohibition against diseased person entering public conveyance.

(2) No owner or driver or person in charge of a public conveyance shall be bound to convey any person suffering as aforesaid, unless and until the said person pays or tenders a sum sufficient tocover any loss and costs that may be incurred in disinfecting such conveyance.

(3) A court convicting any person of contravening sub-section (1) may levy in addition to the penalty for the offence provided in this Act such amount as the court deems sufficient to cover the loss and costs which the owner or driver must incur for the purpose of disinfecting the conveyance ; the amount so imposed shall be awarded by the court to the owner or driver of the conveyance:

Provided that in a case which is subject to appeal, such amount shall not be paid to the owner or driver before the period allowed for presenting the appeal has elapsed, or if an appeal is presented, before the decision of the appeal.

(4) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum which the plaintiff shall have received under this Section.

356. (I) The owner, driver or person in charge of any public conveyance in which any person suffering from a dangerous disease has been carried shall forthwith disinfect the conveyance or cause it to be disinfected.

Disinfection of public conveyance after carriage of patients.

(2) No such conveyance shall be used until the Health Officer or some person authorised by him in this behalf has granted a certificate stating that it may be used without causing risk of infection.

357. (1) No person shall let or sub-let or for that purpose allow any person to enter a building or any part of a building in which he knows or has reason to know that a person has been suffering from a dangerous disease until the Health Officer has granted a certificate that such building may be re-occupied.

Letting of infected buildings.

(2) For the purposes of sub-section (1), the keeper of a hotel or lodging-house shall be deemed to let the same or part of the same to any person accommodated therein

358. In the event of the prevalence of any dangerous disease within the City, the Commissioner may, with the sanction of the Standing Committee, by notice require the owner or occupier of any building, booth or tent used for purpose of public entertainment to close the same for such period as may be fixed by the Standing Committee.

Power to order closure of places of public entertainment.

359. No person being the parent or having the care or charge of a minor who is or has been suffering from a dangerous disease or has been exposed to infection therefrom shall, after a notice from the Health Officer that the minor is not to be sent to school or college, permit such minor to attend school or college without having procured from the Health Officer a certificate (which shall be granted free of charge on application) that in his opinion such minor may attend without undue risk of communicating such disease to others.

Minor suffering from dangerous disease not to attend school.

360. (1) [No person who is suffering from an infectious disease shall take any book] or use or cause any book to be taken for his use from or in any public or circulating library.

Provision as to library books.

(2) A person shall not permit any bookwhich has been taken from a public or circulating library, and is under his control, to be used by any person whom he knows to be suffering from an infectious disease,

(3) A person shall not return to any public or circulating library any book which he knows to have been exposed to infection from any infectious disease, or permit any such book which is under his control to be so returned but shall give notice to the Commissioner that the book has been so exposed to infection, and the Commissioner shall cause the book to be disinfected and returned to the library, or to be destroyed.

(4) The Commissioner shall pay to the proprietor of the library from which the book is procured the value of any book destroyed under the power given by this Section.

Explanation.—For the purposes of this Section the Commissioner shall from time to time notify what diseases are to be deemed infectious.

[361. If the Health Officer certifies that the water in any well, tank or other place within the limits of the City is likely, if used for drinking, to engender or cause the spread of any dangerous disease, the Commissioner may by public notice prohibit the removal or use of such water for drinking and domestic purposes during a specified period.]

Power of Commissioner to prohibit use of water likely to spread infection.

[362. The Corporation shall enforce vaccination throughout the City in such manner as may be prescribed and it may enforce re-vaccination through out the City or in any part thereof, in respect of such persons, to such extent and in such manner as may be prescribed.]

Compulsory vaccination.

Small-pox

363. Where an inmate of any dwelling-place within the City is suffering from small-pox the head of the family to which the inmate belongs and, in his default the occupier or person in charge of such place, shall inform the Commissioner, the Health Officer or the Sanitary Inspector of the division, with the least practicable delay.

Obligation to give information of small-pox.

PART V.

SUBSIDIARY LEGISLATION AND PENALTIES.

CHAPTER XIV—RULES,

BYE-LAWS AND REGULATIONS.

Rules and Schedules.

Power of Government to make rules.

364. (1) Our Government may make rules to carry out all or any of the purposes of this Act not inconsistent therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) provide for all matters expressly required or allowed by this Act to be prescribed ;

[(*b*) regulate or prohibit the moving of any resolution or the making of any motion on, or the discussion of, any matter unconnected with the municipal administration;

(*c*) prescribe the accounts to be kept by the Corporation, the manner in which such accounts shall be audited and published and the conditions under which the ratepayers may appear before auditors, inspect books and vouchers and take exception to items entered therein or omitted therefrom;

(*d*) prescribe the forms of all registers, reports and returns, the manner in which such registers shall be maintained, the dates on which the reports and returns shall be made and the officers to whom they shall be sent ;

(*e*) prescribe the powers of auditors inspecting and superintending officers and officers authorised to hold inquiries, to summon and examine witnesses, and to compel the production of documents and all other matters connected with audit, inspection and superintendence ; and

(*f*) prescribe the form of warrant under rule 31 and the form of notice of sale under rule 33 of Schedule II ;

" (3) Our Government may make rules altering, adding to or cancelling any of the Schedules of this Act except Schedules V and VI.];

(4) All references made in this Act to any of the aforesaid Schedules shall be construed as referring to such Schedules as for the time being amended in exercise of the powers conferred by sub-section (3) ; and

(5) In making any rule Our Government may provide that a breach thereof shall be punishable with a fine which may extend to one hundred rupees.

Making of rules after previous publication.

365. The power to make rules under Section 364 and the power to issue notifications under Section 46 are subject to the following conditions :—

(*a*) A draft of the rules or notification shall be published in Our Government Gazette and forwarded to the Council for its opinion.

(*b*) Such draft shall not be further proceeded with until six weeks after such publication or until such later date as Our Government may appoint.

(*c*) All rules made under Section 364 shall be published in Our Government Gazette and upon such publication shall have effect as if enacted in this Act.

Bye-laws.

Power of Council to make bye-laws.

366. The Council may make bye-laws, no inconsistent with this Act or with any other law to provide —

(i) for the due performance by all Municipal officers and servants of the duties assigned to them ;

(ii) for the regulation of the time and mode ot collecting the taxes, duties and tolls under this Act ;

(iii) for determining the conditions under which lands shall be deemed to be appurtenant to buildings ;

(iv) (*a*) for the use of public tanks, wells, conduits and other places or works for water-supply ;

(*b*) for the regulation of public bathing, washing and the like ;

(*c*) for the maintenance and protection of the water-supply system and the protection of the water-supply from contamination ;

(*d*) for the [terms and] conditions on which house-connections with the watersupply mains may be made; for their alteration and repair and for their being kept in proper order;

(*e*) for supply of water for domestic consumption and use ;

(*f*) for the prevention of waste of water ;

(*g*) for the measurement of water ;

(*h*) for the compulsory provision of cisterns and meters ; and

(*i*) for the supply of water in case of fire ;

(v) for the maintenance and protection of the lighting system ;

(vi) (*a*) for the maintenance and protection of the drainage system ;

(*b*) for the construction of house drains, and for regulating their situation, mode of construction and materials ;

(*c*) for the alteration and repair of house drains;

(*d*) for the cleansing of house drains ;

(*e*) for the construction of closed cess-pools and drains : and

(*f*) for the payment of apportionment of money payable on account of pipe or drains common to more premises than one ;

(vii) for the cleansing of latrines, earth closets, ash-pits and cess-pools, and the keeping of latrines supplied with sufficient water for flushing ;

(viii) (*a*) for the testing of water pipes and drains in private premises, the recovery or the apportionment of the cost of such testing and the breaking up of ground or of buildings for the purpose of such testing ; and

(*b*) for the licensing of plumbers, fitters, and for the compulsory employment of licensed plumbers and fitters ;

(ix) (*a*) for the laying out of streets, and for determining the information and plans to be submitted with applications for permission to lay out streets ; and for regulating the level and width of public streets and the height of buildings abutting thereon ;

(*b*) for the regulation of the use of public streets, and the closing thereof or parts thereof ;

(*c*) for the regulation of traffic in public streets, or their reservation for particular kinds of traffic ; and

(*d*) for the protection of avenues, trees, grass and other appurtenances ofpublic streets and other places ;

(x) for the regulation of the use of parks, gardens and other public or municipal places ;

(xi) (*a*) for the regulation of buildings ;

(*b*) for determining the information and plans to be submitted with applications to build ; and

(*c*) for the licensing of builders and surveyors and for the compulsory employment of licensed builders and surveyors ;

(xii) for the regulation [and licensing] of hotels, lodging houses, boarding houses, choultries, rest-houses, restaurants, eating houses, refreshment rooms, coffee-houses, and any premises to which the public are admitted for repose or for the consumption of anyfood or drink, [or any place where any food or drink is exposed for sale.]

(xiii) for regulating the mode of constructing stables, cattlesheds and cowhouses and connecting them with municipal drains.

[(xiv) for the control and supervision of public and private cart stands for the regulation of their use and for the levy of fees therein.]

(xv) for the sanitary control and supervision of [factories and] places used for any of the purposes specified in Schedule IV and of any trade or manufacture carried on therein ;

(xvi) (*a*) for the control and supervision of slaughter-houses and of places used for skinning and cutting up of carcasses ;

(*b*) for the control and supervision of the methods of slaughtering ; and

(*c*) for the control and supervision of butchers carrying on business in the City or at any slaughter-house without the City provided or licensed by the Corporation ;

(xvii) for the inspection of milch cattle, and the regulation of the ventilation, lighting, cleaning, drainage and water-supply of dairies and cattle-sheds in the occupation of persons following the trade of diary-man or milk seller ;

(xviii) for enforcing the cleanliness of milk stores and milk-shops and vessels and utensils used by the keepers thereof or by hawkers for containing or measuring milk or preparing any milk product [and for enforcing the cleanliness of persons employed in the milk trade.]

(xix) for requiring notice to be given whenever any milch-animal is affected with any contagious disease and prescribing the precautions to be taken in order to protect milch-cattle and milk against infection and contamination ;

(xx) (*a*) for the inspection of public and private markets and shops and other places therein; and

(*b*) for the regulation of their use and the control of their sanitary condition ;

[(*c*) For licensing and controlling brokers, commission agents, weigh-men and measurers practising their calling in markets ;]

(xxi) for prescribing the method of sale of articles whether by measure, weight, tale or piece ;

(xxii) for providing for the inspection of weights and mesures ;

(xxiii) for the prevention of the sale or exposure for sale of unwholesome meat, fish or provisions and securing the efficient inspection and sanitary regulation of shops in which articles intended for human food are kept or sold ;

(xxiv) (*a*) for the regulation of burial and burning grounds and other places for the disposal of corpses ;

(*b*) for the levy of fees for the use of such burial and burning grounds, and crematoria as are maintained by the Corporation ;

(*c*) for the verification of deaths and the causes of death ; and

(*d*) for the period within which corpses must be conveyed to a burial or burnning ground, and the mode of conveyance of corpses through public places ;

(xxv) for the registration of births and deaths,

[(xxvi) for the training and licensing of pathichies and midwives ;]

(xxvii) for the prevention of dangerous diseases of men or animals;

(xxvii) for the enforcement of compulsory vaccination [or re-vaccination.]

(xxviii) for the prevention of out breaks of fire :

(xxix) for the prohibition and regulation of advertisements ;

(xxx) in general for securing cleanliness safety and order and the well-being of the City and for carrying out all the purposes of this Act; and

(xxxi) for all matters expressly required or allowed by the Act to be provided for bye-laws.

Power to give retrospective effect to certain bye-laws.

367. Bye-laws with regard to the drainage of, and supply of water to buildings and water-closets earth-closets, privies, ash pits and cess-pools, in connection with buildings and the keeping of water-closets supplied with sufficient water for flushing may be made so as to affect buildings erected before the passing of the bye-laws or of this Act.

Penalty for breaches of bye-laws.

368. In making any bye-law under Sections 366 and 367 the Council may provide that a breach thereof shall be punishable—

(*a*) with fine which may extend to fifty rupees, and in case of a continuing breach with fine which may extend to fifteen rupees for every day during which the breach continues after conviction for the first breach, or

(*b*) with fine which may extend to ten rupees for every day during which the breach continues after receipt of notice from the Commissioner to discontinue such breach.

Confirmation of bye-laws by Government.

369. (1) No bye-law made by the Council under this Act shall have any validity unless and until it is sanctioned by Our Government.

(2) Our Government may revoke their sanction of any bye-law and thereafter the bye-law shall cease to have effect.

Conditions precedent to making of bye-laws.

370. The power to make bye-laws under this Act is subject to the conditions:—

(*a*) that a draft of the bye-laws is published in Our Government Gazette;

(*b*) that the draft shall not be further proceeded with until after the expiration of a period of one month from the publication thereof or of such longer period as the Council may appoint ;

(*c*) that for at least one month during such period a printed copy

of the draft shall be kept at the Municipal Office for public inspection and all persons permitted to peruse the same at any reasonable time free of charge and

[(*d*) that printed copies of the draft shall be sold to any person requiring them on payment of such price as the Commissioner may fix.]

Power of Govt. to make rules in lieu of bye-laws.

[371. (1) If, in respect of any of the matters specified in section 366, the Council has failed to make any bye-laws or if the bye-laws made by it are not, in the opinion of Our Government adequate, Our Government may make rules providing for such matter to such extent as they may think fit.

(2) Rules made under this Section may add to, alter, or cancel any bye-laws made by the Council

(3) If any provision of a bye-law made by the Council is repugnant to any provision of a rule made under this Section the rule shall prevail and the bye-law shall, to the extent of the repugnancy, be void.

(4) The provisions of Sections 367, 368 and 370, of the second sentence of sub-section (1) of Section 372, and of Section 374 shall apply to the rules made under this Section as they apply to the bye-laws made under Section 366, with the substitution of the words "Our Government" for the word "council" in Section 368 and clause (*b*) of Section 370 and of the words "Our Government" for the word "Commissioner" in clause (*d*) of Section 370.

(5) Before making any rules under this Section, Our Government shall give the Council an opportunity of showing cause against the making thereof.]

Publication of Rules, Bye-laws and Acts.

Publications of bye-laws or rules.

372. (1) When any rule or bye-law has been made under this Act, it shall be published in Our Government Gazette in English and in Malayalam. [A bye-law shall come into operation three months after it has been published as aforesaid.]

(2) The Commissioner shall cause all rules and bye-laws in force to be printed in the said languages, and shall cause printed copies thereof to be sold to any applicant on payment of a fixed price.

Publication of Acts.

373. Regulations made under this Act shall be published in such manner as the Council may determine.

Exhibition of bye-laws, rules and Acts.

374. (1) Printed copies of bye-laws under Section 366, clauses (ix) (*b*) (*c*) (*d*) and (x) shall be affixed at the entrances to, or elsewhere in the street, park or other place affected thereby in such conspicuous manner as the Commissioner may deem best calculated to give information to the persons using such place.

(2) Printed copies of other bye-laws and of the rules and regulations shall be hung up in some conspicuous part of the Municipal Office. The Commissioner shall also keep affixed in a like manner in places of public resort, ma.kets, slaughter houses and other places affected thereby copies of such portions of the rules, bye-laws and regulations as may relate to those places.

(3) No Municipal officer or servant shall prevent any person from inspecting at any reasonable time copies so exhibited.

(4) No person shall, without lawful authority, destroy, pull down, injure, or deface any copies exhibited as above or any board to which the copies have been affixed.

CHAPTER XV.—PENALTIES.

375. (1) Whoever

General provisions regarding penalties specified in the Schedules.

(a) contravenes any provision of any of the Sections or rules of this Act specified in the first column of Schedule V, or

(b) contravenes any rule or order made under any of the said Sections or rules; or

(c) fails to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of the provisions of any of the said Sections, or rules;

shall on conviction be punished with fine which may extend to the amount mentioned in that behalf in the third column of the said schedule.

(2) Whoever after having been convicted of—

(a) contravening any provision of any of the Sections or rules of this Act specified in the first column of Schedule VI

(b) contravening any rule or order made under any of the said Sections or rules; or

(c) failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of any of the said Sections or rules; continues to contravene the said provision or to neglect to comply with the said direction or requisition, as the case may be:

shall on conviction be punished, for each day after the previous date of conviction during which he continues so to offend, with fine which may extend to the amount mentioned in that behalf in the third column of the said schedule.

Explanation:—The entries in the second columns of Schedules V and VI headed "subject" are not intended as definitions of the offences described in the Sections, sub-sections, clauses or rules mentioned in the first column or even as abstracts of those Sections, sub-sections, clauses or rules, but are inserted merely as references to the subject of the Sections, sub-sections, clauses or rules as the case may be.

'376. (1) If a councillor votes in contravention of Section 35, or if any person acts as a councillor knowing that under this Act or the rules made thereunder he is not entitled or has ceased to be entitled to hold such office, he shall on conviction be punished with fine not exceeding two hundred rupees for every such offence.

Penalty for voting when pecuniarily interested and acting as councillor when not entitled etc

(2) If any person acts as or exercises the functions of the Mayor knowing that under this Act or the rules made thereunder he is not entitled or has ceased to be entitled to hold such office or to exercise such functions, he shall on conviction be punished with fine not exceeding one thousand rupees for every such offence.

Penalty for acting as Mayor when not entitled etc.

(3) If the Mayor fails to hand over any documents of or any money or other properties vested in, or belonging to the Corporation, which are in or have come into his possession or control to his successor in office or other prescribed authority, in every case as soon as his term of office as Mayor expires such Mayor shall, on conviction, be punished with fine not exceeding one thousand rupees for every such offence.

Penalty for failure to hand over documents etc. by Mayor.

377. If the Commissioner or any Municipal officer or servant knowingly acquires, directly or indirectly by himself or by a partner or employee or servant, any personal share or interest in any contract or employment with, by, or on behalf of the Corporation he shall be deemed to have committed the offence punishable under Section 160 of the Travancore Penal Code:

Penalty for acquisition by Municipal officer of interest in contract or work.

Provided that no person shall, by reason of being a share-holder in, or member of, any company, be held to be interested in any contract between such company and the Corporation unless he is a director of such company.

378. (1) Every owner or person in charge of any vehicle or animal liable to tax under Section 113 who omits to obtain, within 15 days of the service of a bill on him, a licence under Section 119 shall, on conviction be punished with fine not exceeding fifty rupee,s and shall also pay the amount of the tax payable by him in respect of such vehicle or animal

Penalty for omission to take out licence for vehicle or anima.

(2) On payment of such fine and tax and of such costs as may be awarded, such owner or person shall receive a licence for the vehicle or animal in respect of which he has been fined and for the period during which he has been found to be in default.

(3) The provisions of this Section shall apply to any person who, having compounded for the payment of a certain sum under Section 116, fails to pay such sum and the amount due for a license shall in such case be taken as the amount so compounded for.

379. Any person who wilfully prevents distraint or sufficient distraint of property subject to distraint for any tax due from him, shall, on conviction by a magistrate be, liable to fine not exceeding twice the amount of the tax, found to be due.

Penalty for wilfully preventing distraint.

Penalty for unlawful building.

380. If the construction or reconstruction of any building orwell—

(*a*) is commenced without the permission of the Commissioner, or

(*b*) is carried on or completed otherwise than in accordance with the particulars on which such permission was based, or

(*c*) is carried on or completed in contravention of any lawful order or in breach of any provision contained in this Act or any rule or by-law made under it, or of any direction or requisition lawfully given or made, or

if any alterations or additions required by any notice issued under Section 247 or Section 258 are not duly made, or

if any person to whom a direction is given by the Commissioner to alter or demolish a building or well under Section 259 fails to obey such direction.

The owner of the building or well or the said person, as the case may be, shall be liable on conviction to a fine which may extend in the case of a well or hut to fifty rupees and in the case of any other building to five hundred rupees, and to a further fine which may extend in the case of a well or hut to ten rupees, and in the case of any other building to one hundred rupees, for each day during which the offence is proved to have continued after the first day.

381. (1) In the absence of a written contract to the contrary every scavenger employed by the Corporation shall be entiled to one month's notice before discharge or to one month's wages in lieu thereof, unless he is discharged for misconduct or was engaged for a specified term and discharged at the end of it.

Notice to scavengers before discharge

(2) Should any scavenger employed by the Corporation in the absence of a written contract authorising him so to do, and without reasonable cause, resigns his employment or absents himself from his duties without giving one month's notice to the Corporation or neglects or refuses to perform his duties, or any of them, he shall be liable on conviction to a fine not exceeding fifty rupees or to imprisonment of either description which may extend to two months.

Penalty for withdrawal of scavengers without notice.

(3) Our Government may by notification direct that on and from a date to be specified in the notification, the provisions of sub-sections (1) and (2) with respect to scavengers shall apply also to any otherspecified class of Municipal servants whose functions concern the public health or safety.

Application of sub-section (1) and (2) to other Municipal servants.

382. Every person who prevents the Commissioner, or any person to whom the Commissioner has lawfully delegated his power from exercising his power of entering on any land or into any building shall be deemed to have committed an offence under Section 341 of the Travancore Penal Code.

Wrongful restraint of Commissioner and his delegates.

["383. If any person who is required by the provisions of this Act or by any notice or other proceedings issued under this Act to furnish any information—

Penalty for not giving information or giving false information.

(*a*) omit to furnish it, or

(*b*) knowingly or negligently furnishes false information,

such person shall, on conviction be punished with fine not exceeding one hundred rupees."]

PART VI.

Chapter XVI—Procedure and Miscellaneous.

Licenses and Permissions.

384. (1) Every licence or permission granted under this Act or any rule or bye- law made under it shall specify the period, if any, for which and the restrictions, limitations and conditions subject to which the same is ranted and shall be signed by the Commissioner,

General provisions regarding licenses, registrations and permissions.

[(2) (*a*) Save as otherwise expressly provided in, or may be prescribed under this Act for every such license or permission fees shall be paid in advance on such units and at such rates as may be fixed by the Council :

Provided that the Commissioner may at his discretion consider any application for the grant or renewal of any licence or permission though the fee payable therefor has not been paid in advance:

Provided further that not more than one fee shall be levied in respect of any purpose specified in more heads than one of Schedule IV if such heads form part of a continuous process of manufacture and the fee so charged shall not exceed the highest fee chargeable in respect of any one of the said purposes.

(*b*) The Council may compound for any period not exceeding three years at a time with the owner of any mill or factory for a certain sum to be paid in lieu of the fees payable in respect of such mill or factory.

(*c*) Every order of the Commissioner or other municipal authority granting or refusing a licence or permission shall be published on the notice board of the Corporation.

(3) Every order of the Commissioner or other municipal authority refusing, suspending, cancelling or modifying a licence or permission shall be in writing and shall state the grounds on which it proceeds.]

(4) Subject to the special provisions regarding building in Chapter X and private markets in Chapter XII, and subject to such sanction as may be required for the refusal of a licence or permission, any licence or permission granted under this Act or any rule or bye-law made under it may at any time be suspended or revoked by the Commissioner, if any of its restrictions, limitations or conditions is evaded or infringed by the grantee or if the grantee is convicted of a breach of any of the provisions of this Act or of any rule, bye law or regulation made under it in any matter to which such licence or permission relates, or if the grantee has obtained the same by misrepresentation or fraud.

(5) It shall be the duty of the Commissioner to inspect places in respect of which a licence or permission is required by or under this Act, and he may enter any such place between sunrise and sunset. and also between sunset and sunrise if it is open to the public or any industry is being carried on in it at the time ; and if he has reason to believe that anything is being done in any place without a licence or permission, where the same is required by or under this Act. or otherwise than in conformity with the same, he may at any time by day or night without notice enter such place for the purpose of satisfying himself whether any provision of law, rules, bye-laws, regulations, any condition of a license or permission or any lawful direction [or prohibition] is being contravened and no claim shall lie against any person for any damage or

inconvenience [necessarily] caused by the exercise of powers under this sub-section by the Commissioner or any person to whom he has lawfully delegated his powers or by the use of any force necessary for effecting an entrance under this sub-section.

(6) When any licence or permission is suspended or revoked, or when the period for which it was granted or within which application for renewal should be made has expired, whichever expires later, the grantee shall for all purposes of this Act or any rule or bye-law made under it be deemed to be without a license or permission until the order suspending or revoking the license or permission is cancelled or subject to sub-section (10), until the licence or permission is renewed, as the case may be.

(7) Every grantee of any licence or permission shall, at all reasonable times, while such licence or permission remains in force, produce the same at the request of the Commissioner.

(8) Whenever any person is convicted of an offence in respect of the failure toobtain a licence or permission or [to make a] registration required by the provisions of this Act or by any rule or bye-law made under this Act the magistrate shall in addition to any fine which may be imposed recover summarily and pay over to the Corporation the amount of the fee chargeable for the licence or permission for registration and may in his discretion also recover summarily and pay over to the [Council] such amount, if any, as he may fix as the costs of the prosecution.

(9) Such recovery of the fee under sub-section (8) shall not [by itself] entitle the person convicted to a licence or permission or to registration as aforesaid.

(10) The acceptance by the Corporation of the prepayment of the fee for a licence or permission or for registration shall not entitle the person making such prepayment to the license or permission or to registration, as the case may be but only to refund of the fee in case of refusal of the licence or permission or of registration but an applicant for the renewal of a licence or permission or registration shall until communication of orders on his application be entitled to act as if the license or permission or registration had been renewed; and save as otherwise specially provided in this Act if orders on an application for a licence or permission or for registration are not communicated to the applicant within forty-five days after the receipt of the application by the Commissioner the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application and subject to the law, rules, bye-laws, regulations and all conditions ordinarily imposed.

Appeals,

Appeals from Commissioner to Standing Committee.

385. (1) An appeal shall lie to the Standing Committee from—

(*a*) any notice issued or other action taken or proposed to be taken by the Commissioner—

(i) under Sections 131, 181, 188, 189, 190, 192, 247, 259 (3), 261 (1), 262 (1), 267 (1), 268, 269, 277, 286, 287, 288, 296 and 297; or

(ii) under any bye-law concerning house-drainage or the connection of housedrains with Municipal drains, or house-connections with water-supply or lighting mains;

(*b* any refusal by the Commissioner to approve a building site under Section 240, to grant permission to construct or reconstruct a building under Section 241 or 253, or

(*c*) any refusal by the Commissioner to grant a permission under Sections 128, 184 265, 296 (3), or

(*d*) any refusal by the Commissioner to grant a licence under Sections 286, 295, 306, 310, 315 or

(*e*) any order of the Commissioner made under Section 384, sub-section (4) suspending or revoking a licence or

(*f*) any other order of the Commissioner that may be made appealable by rules under Section 364.

[(2) If, on any such appeal, the Standing Committee reverses or substantially modifies any action taken or proposed to be taken by the Commissioner or any order passed by him, he may, within one month of the date of such decision, refer the matter to the Council, and pending the decision of the Council on such reference, the Commissioner shall not be bound to give effect to the decision of the Standing Committee.

The decision of the Standing Committee or where the matter has been referred to the Council as aforesaid, the decision of the Council shall be final.]

[386. In any case in which no time is laid down in the foregoing provisions of this Act for the presentation of an appeal allowed thereunder, such appeal shall subject to the provisions of Section 5 of the Travancore Limitation Act VI of 1100 be presented—

(*a*) where the appeal is against an order granting a licence or permission, within thirty days after the date of the publication of the order on the notice board of the Corporation, and

(*b*) in other cases within thirty days after the date of the receipt of the order or proceeding against which the appeal is made.

Power to summon.

[387 All persons authorised by rule to conduct enquiries relating to elections and all inspecting or superintending officers holding any inquiry into matters falling within the scope of their duties, shall have for the purposes of such enquiries the same powers in regard to the issue of summonses for the attendance of witnesses and the production of documents, as are conferred upon Revenue officers by the Travancore Revenue Summons Act, V of 1063, and the provisions of Sections 1, 2, 3 and 4 of that Act, shall apply to summonses issued and to persons summoned by virtue of the powers conferred by this section and all persons to whom summonses are issued by virtue of the said powers shall be bound to obey such summonses.]

Power of person conducting election and other inquiries.

388. The Commissioner may summon any person to attend before him and to give evidence or produce documents, as the case may be, in respect of any question relating to taxation, or inspection or registration, or to the grant of any licence, or permission under the provisions of this Act.

Summons to attend and give evidence or produce documents.

Procedure.

389. All notices and the permissions given, issued or granted, as the case may be under the provisions of this Act must be in writing.

Form of notice and permissions.

390. Whenever under this Act or any rule, bye-law or regulation made under it the doing or omitting to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration opinion or satisfaction of—

Proof of consent of Municipal authorities or Municipal officer.

(*a*) the Council, a Standing Committe, or the Commissioner, or

(*b*) any Municipal, officer.

a written document signed in case (*a*) by the Commissioner and in case (*b*) by the said Municipal officer, purporting to convey or set forth such approval, sanction, consent, concurrence, declaration, opinion, or satisfaction, shall be sufficient evidence thereof.

391. (1) Every licence, permission, notice, bill, schedule, summons [warrant] or other document which is required by this Act or by any rule, bye-law or regulation made under it to bear the signature of the Commissioner or of any Municipal officer shall be deemed to be properly signed if it bears a facismile of the signature of the Commissioner or of such Municipal officer, as the case may be, stamped thereupon.

Signature of documents.

(2) Nothing in sub-section (1) shall be deemed to apply to a cheque drawn upon the Municipal Fund or to any [deed] of contract.

Publication of notifications.

[392. Save as otherwise provided, every notification under this Act shall be published in Our Government Gazette in English, Malayalam, and Tamil.

[393 Every order, notice or other document directed to be published under this Act or any rule bye-law or regulation made under it, shall, unless a different method is prescribed by this Act or by the Council or the Standing committee as the case may be, be translated into Malayalam, and Tamil and deposited in the office of the Corporation and copies thereof in English and in the said vernaculars shall be posted in a conspicuous position at such office and at such other places as the Council or Standing committee as the case may be may direct; and a public proclamation shall be made by beat of drum in the locality affected or by advertisement in the local newspapers that such copies have been so posted and that the originals are open to inspection at the office of the Corporation.]

Notice or prohibition of setting apart of places.

394. [Whenever the Council, a Standing committee or the Commissioner shall have set apart any place for any purpose authorised by this Act or shall have prohibited the doing of anything in any place, the Commissioner shall forthwith cause to be put up a notice in English, Malayalam and Tamil at or near such place. Such notice shall specify the purpose for which such place has been set apart or the act prohibited in such place]

Service or sending of Notices etc.

Method of serving documents.

395. (1) When any notice or other document is required by this Act or by any rule, bye-law, regulation or order made under it to be served on or sent to any person the service or sending thereof may be effected -

(*a*) by giving or tendering the said document to such person; or

(*b*) if such person is not found, by leaving such document at his last known place of abode or business or by giving or tendering the same [to his agent, clerk or servant or some adult members of his family]; or

(*c*) if such person does not reside in the City and his address elsewhere is known to the Commissioner, by sending the same to him by Post or Anchal registered; or

(*d*) if none of the means aforesaid be available, by affixing the same in some conspicuous part of such place of abode or business.

(2) When the person is an owner or occupier of any building or land it shall not be necessary to name the owner or occupier in the

document, and in the case of joint owners and occupiers it shall be sufficient to serve it on, or send it to, one of such owners or occupiers.

["(3) Whenever in any bill, notice, form or other document served or sent under this Act, a period is fixed within which any tax or other sum is to be paid or any work executed or anything provided, such period shall, in the absence of an express provision to the contrary in this Act be calculated from the date of such service or sending by post or Anchal registered."]

Relation of Occupier to Owner.

Recovery by occupier of sum leviable from owner.

396. [If the occupier of any building or land makes on behalf of the owner thereof any payment for which under this Act, the owner but not the occupier is liable such occupier shall be entitled to recover the same from the owner and may deduct it from the rent then or thereafter due by him to the owner.

Obstruction of owner by occupier.

397. (1) If the occupier of any building or land prevents the owner from carrying into effect in respect thereof any of the provisions of this Act the Commissioner may by an order require the said occupier to permit the owner within eight days from the date of service of such order, to execute all such works as may be necessary.

(2) Such owner shall, for a period during which he is prevented as aforesaid, be exempt from any fine or penalty to which he might otherwise have become liable by reason of default [in executing such works.]

Execution of work by occupier in default of owner.

398. If the owner of any building or land fails to execute any work which he is required to execute under the provisions of this Act or of any rule, bye-law, regulation or order made under it, the occupier of such building or land may, with the approval of the Commissioner, execute the said work, and shall be entitled to recover from the owner the reasonable expenses incurred in the execution thereof, and may deduct the amount thereof from the rent then or there after due by him to the owner.

Commissioner's powers of entry [and inspection].

Power of entry to inspect, survey or execute the work.

399. The Commissioner [or any person authorised by him in this behalf] may enter into or on any building or land with or without assistants or workmen, in order to make any inquiry, inspection, test, examination, survey, measurement, or valuation, or for the purpose of [lawfully] placing or removing meters, instruments, pipes or apparatus, or to execute any other work which is authorised by the provisions of this Act or of any rule, bye-law, regulation

or order made under it, or which it is necessary for any of the purposes of this Act or in pursuance of any of the said provision to make or execute ;

Provided that —

(*a*) except when it is in this Act otherwise expressly provided, no such entry shall be made between sunset and sunrise ;

(*b*) except when it is in this Act otherwise expressly provided no dwelling house, and no [part of a] public building or hut which is used as a dwelling place, shall be so entered without the consent of the occupier thereof, unless the said occupier has received at least twenty-four hours' previous notice of the intention to make such entry ;

(*c*) sufficient notice shall be in every case given even when any premises may otherwise be entered without notice to enable the inmates of any apartment appropriated to females to withdraw to some part of the premises where their privacy may be preserved ; and

(*d*) due regard shall be paid, so far as may be compatible with the exigencies of the purpose of the entry, to the social and religious usages of the occupants of the premises.

Power of entry on land adjacent to works.

400. (1) The Commissioner [or any person authorised by him in this behalf] may with or without assistants or workmen enter on any land adjoining or within fifty yards of any work authorised by this Act or by any rule, bye-law, regulation or order made under it, for the purpose of depositing on such land any soil, gravel, stone, or other materials or of obtaining access to such work, or for any other purpose connected with the carrying on thereof.

(2) The Commissioner [or such authorised person] shall, before entering on any land under sub-section (1), give the owner and occupier three days' previous notice of the intention to make such entry, and state the purpose thereof, and shall if so required by the owner or occupier, fence off so much of the land as may be required for such purpose.

(3) The Commissioner [or such authorised person] shall not be bound to make any payment, tender or deposit before entering on any land under sub-section (1), but shall do as little damage as may be. [The Commissioner] shall pay compensation to the owner or occupier of the land for such entry and for any temporary or permanent damage that may result therefrom.

(4) If such owner or occupier is dissatisfied with the amount of compensation paid to him by the Commissioner, he may appeal to the Standing Committee, whose decision shall be final.

Power to enforce licensing provisions.

[401. (1) If under this Act or any rule, bye-law or regulation made under it, the licence or permission of the Council, the

Standing committee or Commissioner or registration in the office of the Corporation is necessary for the doing of any act and if such act is done without such licence or permission or registration or in a manner inconsistent with the terms of any such licence or permission, then:—

Consequences of failure to retain licences etc. or of breach of the same.

(a) the Commissioner may by notice require the person so doing such act to alter, remove or as far as practicable restore to its original state the whole or any part of any property, movable or immovable, public or private affected thereby within a time to be specified in the notice;

(b) the Commissioner or any officer duly authorised by him may also enter into or on any building or land where such act is done and take all such steps as may be necessary to prevent the continuance of such act; and

(c) if no penalty has been specially provided in this Act for so doing such act, the person so doing it shall be liable on conviction before a magistrate to a fine not exceeding fifty rupees for every such offence.

(2) No claim shall lie against the Commissioner or any other person for any damage or inconvenience caused by the exercise of the power given under this Section or by the use of the force necessary for the purpose of carrying out the provisions of this Section."]

Commissioner's power to execute in default.

Time for complying with order and power to enforce in default.

402. (1) Whenever by any notice, requisition or order under this Act or under any rule, bye-law or regulation made under it, any person is required to execute any work, or to take any measure or do anything, a reasonable time shall be named in such notice, requisition or order within which the work shall be executed, the measures taken, or the thing done.

(2) If such notice, requisition or order is not complied with within the time so named, then whether or not a fine is provided for such default and whether or not the person in default is liable to punishment or has been prosecuted or sentenced to any punishment for such default, the Commissioner may cause such work to be executed or may take any measures or do anything which may, in his opinion, be necessary for giving due effect to the notice, requisition or order as aforesaid.

[(3) If no penalty has been specially provided in this Act for failure to comply with such notice, the said person shall on conviction be punished with fine not exceeding fifty rupees for such offence.]

[403 (1) The Commissioner may recover any reasonable expenses incurred under section 402 from the person or any one of the persons to whom the notice, requisition or order was addressed in the same manner as the property tax and may, in executing work or taking measures under section 402 utilize any materials found on the property concerned or may sell them and apply the sale proceeds in or towards the payment of the expenses incurred.

Recovery of expenses from persons liable and limitation on liability of occupier.

(2) If the person to whom notice is given is the owner of the property in respect of which it is given, the Commissioner may (whether any action or other proceeding has been brought or taken against such owner or not) require the person, if any, who occupies such property, or any part thereof, under the owner to pay to the Corporation instead of to the owner the rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under sub-section (1) or to such smaller amount as the Commissioner may think proper, and any amount so paid shall be deducted from the amount payable by the owner.

(3) For the purpose of deciding whether action should be taken under sub-section (2) the Commissioner may require any occupier of property to furnish information as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is payable; and such occupier shall be bound to furnish such information.]

(4) The provisions of this Section shall not affect any contract made between any owner and occupier respecting the payment of expenses of any such work as aforesaid.

404. Instead of recovering any such expenses as aforesaid in the manner provided under Section 409, the Commissioner may, if he thinks fit and with the approval of the Standing Committee, take an agreement from the person liable for the payment thereof, to pay the same in instalments of such amounts and at such intervals as will secure the payment of the whole amount due with interest thereon at the rate of nine per centum per annum, within a period of not more than five years.

Power of Commissioner to agree to receive payment of expenses in instalment.

Power to declare expenses on certain works improvement expenses.

405. If the expenses to be recovered have been incurred or are to be incurred in respect of any work mentioned.—

[(a) In Section 172, Section 173, Section 180, Section 181,

Section 182, Section 188, clause (*b*) of sub-section (1) of Section 211, Section 221, sub-sections (1) and (2) of Section 267, Section 272, Section 277, Section 319 or Section 402; or]

(*b*) in any rule made under this Act in which this Section is made applicable to such expenses.

The Commissioner may if he thinks fit and with the approval of the Standing Committee, declare such expenses to be improvement expenses.

Improvement expenses by whom payable.

406. (1) Improvement expenses shall be a charge on the premises, in respect of which or for the benefit of which the same shall have been incurred and shall be recoverable in instalments of such amounts, and such intervals, as will suffice to discharge such expenses together with interest thereon, within such period not exceeding twenty years as the Commissioner may in each case determine.

(2) The said instalments shall be payable by the owner or occupier of the premises on which the expenses are so charged :

Provided that when the occupier pays any such instalment he shall be entitled to deduct the amount thereof from the rent payable by him to the owner or to recover the same from the owner.

Redemption of charge for improvement expenses.

407. At any time before the expiration of the period for the payment of any improvement expenses, the owner or occupier of the premises on which the expenses are charged may redeem such charge by paying to the Commissioner such part of the said expenses as are still payable.

Relief to agents and trustees.

408. (1) Where an agent, trustee, guardian, manager or receiver would be bound to discharge any obligation imposed by this Act, or of any rule, bye-law, regulation or order made under it for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, in his hands funds belonging to the principal or beneficial owner sufficient for the purpose.

(2) The burden of proving the facts entitling any person to relief under this Section shall lie on him.

(3) When any person has claimed and established his right to relief under this Section, the Commissioner may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which shall come to his hands on behalf or for the use of the principal or beneficial owner, as the case may be, and should he fail to comply with such notice he shall be deemed to be personally liable to discharge such obligation.

Payment of compensation, etc., by and to the Corporation.

["409. All costs, damages, penalties, compensation, charges, fees, rents expenses, contributions and other sums which under this Act or any rule, bye-law or regulation made thereunder or any other law or under any contract including a contract in respect of water-supply or drainage made in accordance with this Act, and the rules, bye-laws and regulations shall if there is no special provision in this Act, for their recovery, be demanded by bill containing particulars of the demand and notice of the liability incurred in default of payment and may be recovered in the manner provided by rules 31 and 37 of the rules contained in Part VI of Schedule II unless within fifteen days from the date of service of the bill such person shall have applied to the District Court of Trivandrum under Section 410."]

Determination by District Court of sums payable.

[410. Where in any case not provided for in Section 418 any Municipal authority or any person is required by or under this Act or any rule, bye-law, regulation or contract made under it to pay any cost damages, penalties, compensation, charges, fees, rents, expenses, contributions, or other sums referred to in Section 409 the amount or apportionment of the same shall, in case of dispute, be ascertained and determined except as is otherwise provided in Sections 351 400, 434 or in the Land Acquisition Act, XI of 1089, by the District Court of Trivandrum on application made to it for this purpose at any time within one year from the date when such costs, damages, penalties, compensation, charges, fees, rent expenses, contributions or other sums first became payable.]

Proceedings before District Court.

411. (1) On any application under the provisions of Section 410 the said District Court shall summon the other party to appear before it.

(2) On the appearance of the parties or, in the absence of any of them, on proof of due service of the summons, the said District Court, may hear and determine the case.

(3) In every such case the said District Court shall determine the amount of the cost and shall direct by which of the parties the same shall be paid.

Recovery of sums payable by distress.

[412. If the sum due on account of costs, damages, penalties, compensation ,charges, fees, rents, expenses, contributions or other sums ascertained in the manner described in Section 411 is not paid by the party liable within seven days after demand, such sum may be recovered under a warrant of the court by distress and sale of the movable property of such party.]

[413. No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the Corporation under this Act after the expiration of a period of three years from the date on which distraint might first have been made, a suit might first have been instituted or prosecution might first have been commenced as the case may be, in respect of such sum.

Limitation for recovery of dues.

414. If any property, movable or immovable is sold under the provisions of this Act, and if there is a surplus after the sum due to the Corporation and the costs have been deducted from the sale-proceeds, such surplus shall, if the owner of the property sold claims it within one year from the date of the sale be paid to him by the Commissioner, but if no such claim is preferred within such time, the said surplus shall be credited to the municipal fund and no suit shall be made for the recovery of any sum so credited.]

Procedure in dealing with surplus sale proceeds.

415. No person shall be liable to be tried for any offence against any of the provisions of this Act, or of any rule bye-law, regulation or order made under it, unless complaint is made [within six months from the commission of the offence by the Police, or the Commissioner, or by a person authorised in this behalf by the Council, or the Standing Committee or the Commissioner.]

Period of limitation for making complaints

Provided that failure to take out a licence, obtain permission or secure registration under this Act shall for the purposes [of this Section] be deemed a continuing offence until the expiration of the period, if any, for which the licence, permission or registration is required, and if no period is specified, complaint may be made at any time within twelve months from the commencement of the offence.

416. All offences against this Act, or against any rule bye-law, regulation or order made under it, whether committed within or without the City, shall be cognizable by a Magistrate having jurisdiction in the City and such magistrate shall not be deemed to be incapable of taking congizance of any such offence, or of any offence against any enactment hereby repealed, by reason only of his being liable to pay any Municipal rate or other tax or of his being benefited by the Municipal Fund to the credit of which any fine imposed by him will be payable.

Cognizance of offences.

417. (1) In case any fine, costs [tax] or other sum of money [imposed, assessed or recoverable] by a Magistrate under this Act or under any rule, bye-law or regulation made under it], shall not be paid, the Magistrate may order the offender to be imprisoned

Imprisonment in default of payment and application of fines.

in default of payment subject to all the restrictions, limitations and conditions imposed in Sections 53 to 59 (both inclusive) of the Travancore Penal Code.

["Any fine, costs, tax or other sum imposed, assessed or recoverable by a Magistrate under this Act or any rule, bye-law or regulation made thereunder shall be recoverable by such Magistrate, as if it were a fine imposed under the Code of Criminal Procedure and the same shall on recovery be paid to the Corporation to be applied for the purposes of this Act."]

Payment of compensation for damage to Municipal property.

418. If, on account of any act or omission, any person has been convicted of an offence against the provision of this Act or against any rule, bye-law or Act made under it and by reason of such act or omission damage has been caused to any property of the Municipality the said person shall pay compensation for such damage, notwithstanding any punishment to which he may have been sentenced for the said offence. In the event of dispute the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence on application made to him for the purpose by the Commissioner not later than three months from the date of conviction; and, in default of payment of the amount of compensation so determined, it shall be recovered under a warrant from the said Magistrate as if it were a fine inflicted by him on the person liable therefor.

Legal Proceedings in General.

Recovery of tax, etc., by suit.

419. Nothing herein contained shall preclude the Corporation from suing in a Civil Court for the recovery of any tax, duty, toll or other amount due under this Act.

Institution of suits against Municipal authorities and officers and agents.

420. No suit for damages or compensation shall be instituted against the Corporation or any Municipal authority, officer or servant, or any person acting under the direction of the same in respect of any act done in pursuance or in execution or intended execution of this Act or any rule, bye-law, regulation or order under it or in respect of any alleged neglect or default in the execution of this Act or any rule, bye law, regulation or order made under it until the expiration of one month after a notice [in writing] has been delivered or left at the Municipal office or at the place of abode of such officer, servant or person, stating the cause of action, the relief sought, and the name and the place of abode of the intending plaintiff and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be commenced within six months after the date on which the cause of action arose or in case of a continuing injury or damage during such continuance or within six months after the ceasing thereof.

(3) If any person to whom any notice is given under sub-section (1) tenders amends to the plaintiff before the suit is instituted, and if the plaintiff does not recover in any such action more than the amount so tendered he shall not recover any costs incurred after such tender and the defendant shall be entitled to costs as from the date of tender.

(4) Where the defendant in any such suit is the Commissioner, a Municipal officer or servant, payment of the sum or any part of any sum payable by him in or in consequence of the suit, whether in respect of costs, charges, expenses, compensation for damages or otherwise, may be made with the sanction of the Standing Committee, from the Municipal Fund.

Provision respecting institution etc. of civil and criminal actions and obtaining legal advice.

421. The Commissioner may—

(*a*) take, or withdraw from, proceedings against any person who is charged with

(i any offence against this Act, the rules, bye-laws or regulations ; or

(ii) any offence with affects or is likely to affect any property or interest of the Corporation or the due administration of this Act ; or

(iii) committing any nuisance whatsoever ;

(*b*) compound any offence against this Act, the rules, bye-laws or regulations which may by rules made by Our Government be declared compoundable ;

(*c*) defend himself if sued or joined as a party in any proceeding in respect of the conduct of elections or in respect of the electoral roll ;

(*d*) defend, or compromise any appeal against an assessment or tax ;

(*e*) take, withdraw from or compromise proceedings under Sections 410 and 418 for the recovery of expenses or compensation claimed to be due to the Corporation ;

(*f*) withdraw or compromise any claim for a sum not exceeding one hundred rupees against any person in respect of a penalty payable under a contract entered into with such person by the Commissioner, or with the approval of the Standing Committee, any such claim for any sum exceeding one hundred rupees ;

(*g*) with the approval of the Council, defend any suit or other legal proceeding brought against the Corporation or against any Municipal authority, officer or servant, in respect of anything done or omitted to be done by them, respectively, in their official capacity ;

(*h*) with the approval of the Standing Committee, compromise any claim, suit or other legal proceeding brought against the Corporation or against any Municipal authority, officer or servant in respect of anything done or omitted to be done as aforesaid;

(*i*) with the approval of the Standing Committee institute and prosecute any suit or withdraw from or compromise any suit or claim, other than a claim of the description specified in clause (*f*) which has been instituted or made in the name of the Corporation or of the Commissioner ; and

(*j*) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or he may be desired by the Council or the Standing Committee to obtain for any of the purposes mentioned in the foregoing clauses of this Section or for securing the lawful exercise or discharge of any power or duty vesting in or imposed upon any Municipal authority, officer or servant

Protecting Clauses.

Indemnity to Municipal authorities, officers and agents.

422. No suit shall be maintainable against [Our Government], any Municipal authority, officer, or servant or any person acting under the direction of [Our Government or] any Municipal authority, officer or servant, or of a Magistrate, in respect of anything in good faith done under this Act or any rule, bye-law, or regulation order made under it.

Liability of Commissioner and councillors for loss, waste or misapplication.

423. (1) The Commissioner [every officer] and every councillor shall be liable for the loss, waste or misapplication of any money or other property owned by or vested in the Corporation if such loss, waste, or misapplication is a direct consequence of his neglect or misconduct and a suit for compensation may be instituted against him by the Council with the previous sanction of Our Government, or [by Our Government.]

(2) Every such suit shall be commenced within [three years] after the date on which the cause of action arose.

(3) When [the Mayor] the Commissioner, [any officer] or any councillor is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no [Magistrate] shall take cognizance of such offence except with the previous sanction of Our Government.

"424. (1) No assessment or demand made and no charge imposed under the authority of this Act shall be impeached or affected by reason of any clerical error or by reason of any mistake (*a*) in respect of the name, residence, place of

business or occupation of any person, or (*b*) in the description of any property or thing or (*c*) in respect of the amount assessed, demanded or charged :

Assessment etc., not to be impeached.

Provided that the provisions of this Act have, in substance and effect, been complied with. And no proceedings under this Act shall, merely for defect in form, be quashed or set aside by any Court.

(2) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment, or collection of money made under the said authority ;

Provided that the provisions of this Act have, in substance and effect, been complied with.

(3) No distraint or sale under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any error, defect or want of form in the bill notice, schedule, form, summons, notice of demand, warrant of distraint, inventory, or other proceeding relating thereto, if the provisions of this Act, the rules and bye-laws have, in substance and effect, been complied with :

[Provided that every person aggrieved by any irregularity may recover satisfaction for any special damage sustained by him.]

Police.

Duties of Police Officers.

425. It shall be the duty of every Police Officer—

(*a*) to communicate without delay to the proper Municipal officer any information which he receives of the design to commit or of the commission of any offence under this Act or any rule, bye-law or regulation made under it ;

(*b*) to assist the Commissioner or any Municipal officer or servant or any person to whom the Commissioner has lawfully delegated powers reasonably demanding his aid for the lawful exercise of any power vesting in the Commissioner or in such Municipal officer or servant or person under this Act or any such rule, bye-law or regulation ; and

(*c*) to assist any person employed in the collection of tolls in cases of resistance to the lawful authority of such person ;

and for all such purposes he shall have the same powers which he has in the exercise of his ordinary police duties.

Power of Police Officers to arrest persons.

426. (1) If any Police Officer sees any person committing an offence against any of the provisions of this Act or of any rule, bye-law or regulation made under it, he shall, if the name and address of such person are unknown to him and if the said person on demand

declines to give his name and address or gives a name and address which such officer has reason to believe to be false, arrest such person.

(2) No person arrested under sub-section (1) shall be detained in custody—

(a) after his true name and address are ascertained, or

(b) without the order of a Magistrate for any longer time, not exceeding twenty-four hours from the hour of arrest, than is necessary for bringing him before a Magistrate.

Exercise of power of Police Officer by Municipal servants.

427. Our Government may empower any [Municipal officer or servant or any class of Municipal Officers or servants] to exercise the powers of a Police Officer for the purposes of this Act.

Miscellaneous.

Application of term "public servant" to Municipal officers, agents and sub-agents.

428. Every Municipal officer or servant, every contractor or agent for the collection of any Municipal tax, toll, or fee or [other] sum due to the Corporation [and every person employed by any such contractor or agent for the collection of such tax, toll, or fee sum] shall be deemed to be a public servant within the meaning of Section 15 of the Travancore Penal Code.

Prohibition against obstruction of Municipal contractor.

429. No person shall obstruct or molest [the Council, any Standing Committee, the Mayor, any Councillor, the Commissioner or any person employed by the Corporation] or any person with whom the Commissioner has entered into a contract on behalf of the Corporation in the performance of [their] duty or of anything which [they are] empowered or required to do by virtue or in consequence of this Act or of any rule, bye-law, regulation or order made under it.

Prohibition against removal of mark.

430. No person shall remove any mark set up for the purpose of indicating any level or direction incidental to the execution of any work authorised by this Act or by any rule, bye-law, regulation or order made under it.

Prohibition against removal or obliteration of notice.

431. No person shall without authority in that behalf, remove, destroy, deface, or otherwise obliterate any notice exhibited by or under the orders of [the Council, a Standing Committee, or the Commissioner.]

Prohibition against unauthorised dealings with public places or materials

432. No person shall, without authority in that behalf. remove earth, sand or other material or deposit any matter or make any encroachment from, in, or on any land vested in the Corporation or river, estuary, canal, back-water, or water-course (not being private property), or in any way obstruct the same.

433. Our Government or the Municipal Council with the sanction of Our Government may exempt any person or class of persons from the payment in whole or in part of any tax or fee payable under this Act or the rules, bye-laws, or regulations passed thereunder.

Power to exempt taxation or fees.

[434. (1) When a dispute exists between the Corporation and one, or more than one other local authority in regard to any matters arising under the provisions of this or any other Act and Our Government are of opinion that the local authorities concerned are unable to settle it amicably among themselves, Our Government may take cognizance of the dispute, and decide it themselves.

Adjudication of disputes between local authorities.

(2) The decision of Our Government under sub-section (1) shall be final and binding on each of the disputing local authorities.]

Transitional and Transitory Provisions.

435. All property and all interests of whatever kind owned by, vested in or held in trust by or for the Municipality with all rights of whatever kind used, enjoyed or possessed by the Municipality as constituted under the Travancore Municipal Act, V of 1095, as well as all liabilities legally subsisting against the said Municipality shall pass to the Corporation as constituted under this Act.

Passing of property and rights to Municipality as reconstituted.

436. All arrears of taxes or other payments by way of composition for a tax or due for expenses or compensation or otherwise due to the Municipality at the time this Act comes into force may be recovered as though they had accrued under this Act.

Procedure for recovery of arrears of taxes, etc.

437. This Act shall come into force on such date as Our Government may by notification direct :

Commencement of Act.

Provided that the power to make or approve rules, bye-laws and regulations may be exercised at any time after the passing of this Act and that any election or appointment of councillors or members of the Standing Committee under this Act or under the rules made under this Act may, notwithstanding anything in sub-clause (v) of clause *(b)* of sub-section (1) to Section 53, be held or made at any time after such passing, but no such election or appointment shall take effect until the commencement of this Act.

438. In their application to the term of office and the election and appointment of councillors, the provisions of this Act shall be read subject to the following modification :—

Provisions of first constitution of Municipality under Act.

(*a*) the term of office of the President, of the other councillors holding office under the Travancore Municipal Act, V of 1095, shall expire on such dates or dates after the commencement of this Act as Our Government shall determine; and Our Government shall make appointments and cause arrangements for election to be made under this Act so that the newly elected and appointed councillors may come into office on the date fixed for the retirement of the former councillors, and the Commissioner appointed under this Act on the date fixed for the retirement of the President appointed under the Travancore Municipal Act, V of 1095, such date not being later than the date fixed for the retirement of the remaining councillors holding office under the Travancore Municipal Act, V of 1095, and until they so come into office the President, and the councillors, appointed or elected under the Travancore Municipal Act, V of 1095, shall have all the powers and be subject to all the duties respectively of the Commissioner, the councillors, and the Standing Committee, under this Act;

(*b*) on or as soon as may be after the constitution of the Council under this Act a meeting shall be held on a day and at a time fixed by the Commissioner, and, if not held on that day, shall be held on some subsequent day fixed by the Commissioner for the election of a [Mayor,] and of Standing Committees under this Act; and

(*c*) the first meeting of each Standing Committee elected for the first time under this Act shall be held on a day at a time fixed by the Commissioner.

SCHEDULE I.

Rules regarding proceedings of the Council and Committees.

(*See Section* 32.)

The Council.

["1. The Council shall meet in the Municipal Office for the transaction of business at least once in every month, on such day and on such hour as it may arrange and also at other times as often as a meeting may be convened by the Mayor."

"2. (1) No meeting shall be held unless at least three clear days before the day of the meeting—

(*a*) Notice of the day and hour when the meeting is to be held and of the business to be transacted thereat has been given to the members, and

(b) Notice of the day and hour of the meeting has been published in the Municipal Office.

(2) In cases of urgency the Mayor may convene a meeting after giving to the members shorter notice than that specified in sub-rule (1). In such cases notice of the day and hour of the meeting shall be published in such manner as the Mayor may deem most expedient.

(3) It shall be competent to the Mayor for good and sufficient reason to alter the day or hour of the meeting at any time before the day originally fixed, provided that he shall intimate the alteration to the Councillors and publish it in the Municipal Office."

3. [At an ordinary meeting held on each of the months of Thulam, Dhanu, Kumbhom, Medom, Mithunam and Chingom the Mayor] shall place before the Council statement of receipts and disbursements on account of the Municipal Fund from the close of the last preceding year up to the close of the month before that in which the meeting takes place.

4. (1) The Mayor may call a special meeting of the Council at the Corporation office, whenever he thinks fit, and shall call such a meeting on receiving a request in writing signed by eight councillors specifying a resolution which it is proposed to move.

(2) No special meeting shall be held unless at least four clear days' notice, specifying the purpose for which such meeting is to be held and the date and hour thereof has been given by a communication addressed to each councillor and by publication in Municipal office.

5. If the office of Mayor is vacant the duties assigned to the Mayor by Rules 1 to 4 above shall be performed by the Commissioner.

["6. All meetings of the Council shall be open to the public provided that the Mayor or presiding member may direct that the public generally or any particular person shall withdraw."

"7. All questions which may come before the Council at any meeting shall be decided by a majority of the members present and voting at the meeting and in every case of equality of votes the Mayor or presiding member shall have and exercise a second or casting vote."

"8. No business shall be transacted at any meeting unless there be present at least ten members."

"9. No resolution of the Council shall be modified or cancelled within three months after the passing thereof except at a meeting specially convened in that behalf and by a resolution of the Council supported by not less than fifteen members."]

10. (1) Minutes of the proceedings of the Council shall be entered in a book to be called the minute-book, and shall be signed by the Mayor after each meeting.

(2) The minute book shall be open at the Municipal office at all reasonable times to the inspection of any councillor without payment and to the inspection of any other person on payment of a fee of half a rupee.

11. (1) The Council may appoint from among its own number committees for the purpose of inquiring into and reporting on any matter which is reserved by this Act for the decision of the Council.

(2) By a resolution supported by not less than half the whole number of councillors, the Council may add to any committee so appointed persons who are not councillors, but who may possess special qualifications in regard to the matter to be inquired into :

Provided that the number of persons so appointed shall not exceed one-half of the number of councillors appointed to serve on the committee.

[Provided further that all the provisions of this Act relating to the duties, powers, liabilities, disqualifications, and disabilities of Councillors shall save as regards the disqualification on the ground of residence or of being a Government servant be applicable as far as may be to such persons.]

(3) The proceedings of every such committee shall be recorded in writing and submitted to the Council.

[12. The Commissioner may grant copies of the proceedings and records of the Council and the Standing Committees on payment of such fees as the Council may by general or special order determine. Copies shall be certified in such manner as may be prescribed by the Council and such copies shall be admissible in evidence and shall be admitted as evidence of the matters therein recorded in every case where and to the same extent to which the original entry would, if produced, have been admissible to prove such matters.]

The Standing Committees.

13. Each Standing Committee shall meet at the Municipal office at least once a month on such day and at such hour as the Committee shall from time to time determine.

14. The Chairman of a Standing Committee may at any time call a meeting of the Committee and shall do so within forty-eight hours of the receipt of a requisition signed by the Commissioner or by three members of the Committee and stating the business to be transacted.

15. No business shall be transacted at any meeting of a Standing Committee unless there is a quorum of three.

16. All questions shall be decided by a majority of members present and voting, the Chairman [or presiding member] having a second or casting vote when there is an equality of votes.

17. Minutes of the proceedings of each Standing Committee shall be entered in books and shall be signed by the Chairman [or presiding member.] The minute book shall be placed before the Council at such times as it may appoint.

18. In any case in which two or more Standing Committees have passed conflicting decisions, and such conflict has not been adjusted or otherwise dealt with by a conference of such Committees or a joint Committee as provided in sub-section (1) to Section 20, the Commissioner shall submit a report to the Mayor who shall place the subject before a meeting of the Council and pending the resolution of the Council, the Commissioner shall withhold all action in regard to the matter at issue.

19. Any member of a Standing Committee, other than the [Mayor,] who fails to attend, [three] consecutive meetings shall cease to be a member of it, but may be re-elected by the Council.

SCHEDULE II.

Taxation Rules.

PART I.

A

Provisions common to taxes in general.

1. (1) The Commissioner shall prepare and keep assessment books in such form and in such parts and sections as he thinks fit, showing the persons and property liable to taxation under this Act.

(2) The assessment books and where detailed particulars relating to any assessment are kept in separate records, the portion thereof containing such particulars shall be open at all reasonable time and without charge to inspection by any person who pays any tax to the Corporation or his authorised agent and such person or agent shall be entitled to take extracts, free of charge from the said books and records.

(3) The account books of the Corporation shall be open without charge to inspection by any person who pays any tax to the Corporation or his authorised agent on a day or days in each month to be fixed by the Council.

2. The Commissioner shall, save as otherwise provided in this Act, determine the tax to which each property or person is liable.

3. (1) The Commissioner shall give to every person making payment of a tax a receipt therefor signed by him or some person duly authorised by him in that behalf.

(2) Such receipt shall specify —

(*a*) the date of the grant thereof;

(*b*) the name of the person to whom it is granted;

(*c*) the tax in respect of which payment has been made and in the case of property tax, also the property in respect of which payment has been made;

(*d*) the period for which payment has been made; and

(*e*) the amount paid.

B

Assessment of the property tax.

4. The Commissioner shall enter in the assessment books the annual value of all lands and buildings and the tax payable thereon. Such books shall also record the following particulars with regard to each assessable item: —

(i) the serial number, description and name (if any) of the item;

(ii) the name of the division and of the street, if any, in which it is situated and any survey or other number which it bears;

(iii) the name of the owner;

(iv) the name of the occupier;

(v) the annual value or the extent as the cases may be; and

(vi) the amount of tax payable.

5. The assessment books shall be completely revised by the Commissioner once in every five years.

6. An assessment once made shall continue in force until it is revised and until the revised assessment takes effect.

7. When assessment books have been prepared for the first time and whenever a general revision of such books has been completed the Commissioner shall give public notice —

(*a*) specifying the time when and the place where the books may be inspected; and

(*b*) stating that revision petitions will be considered if they reach the Municipal Office within thirty days from the date of such notice in the case of Our Government or a Company and fifteen days from the said date in other cases.

8. The Commissioner may after giving notice in writing to the parties concerned and hearing their objections, if any, amend the property tax assessment books at any time between one general revision and another by inserting therein or removing therefrom any property or

by altering the valuation of any property or the amount of tax. Such amendment shall be deemed to have taken effect on the first day of the half-year in which it is made:

Provided that when the amendment is made in any half-year after the demand notice for that half-year has been issued, it shall have effect only from the succeeding half-year.

9. In every case in which between one general revision and another the Commissioner assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the Commissioner shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the Municipal Office within thirty days from the date of service of such notice in the case of Our Government or a Company, and within fifteen days from the said date in other cases.

10. Any person may, at any time, not being less than thirty days before the end of a half-year, move the Commissioner by revision petition to reduce the tax to which he is liable for the forthcoming half-year on the ground that the annual value of the property in respect of which the tax is imposed has decreased since the assessment of the property was last made or revised.

11. No petition under Rule 7, 9 or 10 shall be disposed of unless the petitioner has been given a reasonable opportunity to appear either in person or by authorised agent and to represent his case.

12. Immediately after the disposal of a revision petition, the Commissioner shall inform the petitioner or his authorised agent, in writing of the orders passed thereon, shall direct him to pay the amount fixed on revision within 15 days after the date of receipt of such intimation or if the amount is not already due, within 15 days from the date on which it becomes due, and shall, if necessary, cause the assessment books to be corrected.

13. (1) A general revision shall be deemed to have taken effect on the first day of the half-year following that in which the notice under rule 7 is published.

(2) Any correction in the assessment books made by the Commissioner under rule 12 or rule 28 shall be deemed to have effect on the first day of the half-year to which the assessment which was sought to be revised or which was appealed against relates.

Explanation.—The levy of a new class of property tax or an enhancement in the rate at which any class of property tax is leviable is no amendment or revision within the meaning of this rule and shall have effect from the day fixed for the levy or enhancement.

14. The first payment of tax shall, save as provided in rule 12, be made within thirty days of the day specified in rule 13.

PART II.

ASSESSMENT OF COMPANIES.

(See Section 106.)

[15. (1) Companies, the Head Office or a Branch or Principal Office of which is within the City shall be assessed by the Commissioner on the following scale :—

Paid up capital.		Half-yearly tax
Lakhs of rupees.		Rs.
A Less than one	...	30
B One and more than one, but less than two	...	50
C Two and more than two, but less than three	...	100
D Three and more than three, but less than five	...	150
E Five and more than five, but less than ten	...	250
F Ten and more than ten, but less than twenty	...	500
G Twenty and more than twenty	...	1,000

(2) In the case of any Company, the head office or a branch or Principal office of which is not in the City and which shows that its gross income received in or from the City.

(*a*) [has not exceeded Rs. 5,000	shall pay only 25 rupees per half year.
(*b*) has exceeded Rs. 5,000 but has not exceeded Rs. 10,000	shall pay only 50 rupees per half year.
(*c*) has exceeded Rs. 10,000 but has not exceeded Rs. 20,000.	shall pay only 100 rupees per half-year.
(*d*) has exceeded Rs. 20,000.	shall pay per half-year 100 rupees together with a sum calculated at the rate of 25 rupees per half-year for every 5,000 rupees or part there of, of gross income in excess of Rs. 20,000 subject to a maximum half- yearly tax of 1,000 rupees.

[Provided that when a Company the head or branch or principal office of which is not in the City becomes liable to tax for the first time it shall pay in the first year a tax of Rs. 25 ; but if the gross income of the Company during such year is subsequently found to have exceeded Rs. 5,000, it shall pay the tax calculated in accordance with the above mentioned scale less the initial payment of Rs. 25.]

ASSESSMENT OF PROFESSION TAX.

(*See Section 107.*)

16. Persons shall be assessed by the Commissioner to the profession tax under the following classes on a scale to be determined by the Council from time to time:

Provided that such scale shall be subject to the maximum and minimum specified against each class and shall proceed proportionately either to the maximum or the minimum scale:—

Tax on persons holding appointments for exercising professions, arts, trades and callings.

	Half-yearly Maximum Rs.	Half-yearly Minimum Rs
CLASS I.		
(1) [All persons holding any appointment upon a monthly salary of five thousand rupees or upwards.	250	160
(2) All other persons exercising any profession, art or calling or transacting business or their agents or servants in their absence.		
CLASS II.		
(1) All persons holding any appointment upon a monthly salary which amounts to three thousand or upwards but is less than five thousand rupees.	165	145
(2) All other persons described in Class I but not assessed under Class I.		
CLASS III.		
(1) All persons holding any appointment upon [a monthly salary which amounts to two thousand or upwards but is less than three thousand rupees.	145	100
(2) All other persons described in Class I but not assessed under Class I or II.		
CLASS IV.		
(1) All persons holding any appointment upon a monthly salary which amounts to one thousand five hundred or upwards but is less than two thousand rupees.	100	75
(2) All other persons described in Class I but not assessed under any of the previous classes.		

	Half yearly. Maximum Rs.	Half yearly. Minimum Rs.
CLASS V.		
(1) All persons holding any appointment upon a monthly salary which amounts to nine hundred or upwards but is less than one thousand five hundred rupees.	75	45
(2) All other persons described in Class I but not assessed under any of the previous classes.		
CLASS VI.		
(1) All persons holding any appointment upon a monthly salary which amounts to seven hundred or upwards but is less than nine hundred rupees.	45	30
(2) All other persons described in Class I but not assessed under any of the previous classes.		
CLASS VII.		
(1) All persons holding any appointment upon a monthly salary which amounts to five hundred or upwards but is less than seven hundred rupees.	30	20
(2) All other persons described in Class I but not assessed under any of the previous classes		
CLASS VIII.		
(2) All persons holding any appointment upon a monthly salary which amounts to four hundred or upwards but is less than five hundred rupees.	20	14
(2) All other persons described in Class I but not assessed under any of the previous classes.		
CLASS IX.		
(1) All persons holding any appointment upon a monthly salary which amounts to three hundred or upwards but is less than four hundred rupees.	14	10
(2) All other persons described in Class I but not assessed under any of the previous classes.		

	Half yearly.	
	Maximum Rs.	Minimum Rs.
CLASS X.		
(1) All persons holding any appointment upon a monthly salary which amounts to two hundred and fifty or upwards but is less than three hundred rupees.	10	8
(2) All other persons described in Class I but not assessed under any of the previous classes.		
CLASS XI.		
(1) All persons holding any appointment upon a monthly salary which amounts to two hundred or upwards but is less than two hundred and fifty rupees.	8	6
(2) All other persons described in Class I but not assessed under any of the previous classes.		
CLASS XII.		
(1) All persons holding any appointment upon a monthly salary which amounts to one hundred and fifty or upwards but is less than two hundred rupees.	6	3
(2) All other persons described in Class I but not assessed under any of the previous classes.		
CLASS XIII.		
(1) All persons holding any appointment upon a monthly salary which amounts to one hundred or upwards but is less than one hundred and fifty rupees.	3	2
(2) All other persons described in Class I but not assessed under any of the previous classes.		

	Half yearly.	
	Maximum Rs.	Minimum Rs.
CLASS XIV.		
(1) All persons holding any appointment upon a monthly salary which amounts to fifty or upwards but is less than one hundred rupees.	2	1
(2) All other persons described in Class I but not assessed under any of the previous classes		
CLASS XV.		
All hotel keepers, lodging, boarding or eating or refreshment house-keepers and shop keepers not assessed under any of the previous classes.	2	½

17. (1) The Commissioner may classify all persons liable under Rule 8, but not in receipt of a fixed salary or remuneration, on general considerations with reference to the nature and reputed value of their business, the size and rental of residential and business premises, the quantity of articles dealt with, the number of persons employed and the income tax paid to Government. The Commissioner shall not call for accounts of any assessee, but any person may produce his accounts to show that the net income derived by him from the exercise of his profession, art, [or calling or the transaction of his business] within the City falls below the lowest limit of salary entered at the head of the class in which the Commissioner has placed him and the Commissioner shall revise the assessment if satisfied that the person should be placed in a different class.

(2) The Commissioner may exempt any person falling within the fifteenth class on the ground of his poverty.

PART III.

Tax on Carriages and Animals.

(See Section 113.)

18. (*a*) The tax on carriages and animals shall be levied at half-yearly rates not exceeding those shown in the following table :

	Half-yearly instalment, Rs.	ch.
[For every tram car ...	50	0]
For every motor or steam vehicle with metal tyres constructed to carry 2 tons or more ...	100	0

	Half-yearly instalment. Rs.	ch.
Additional charge for each trailer ...	50	0
For every motor or steam vehicle with cushion or solid rubber tyres constructed to carry 2 tons or more ...	75	0
For every motor or steam vehicle constructed to carry 1 ton or more but less than 2 tons ...	60	0
For every motor or steam vehicle constructed to carry less than 1 ton ...	50	0
Additional charge for each trailer with cushion or solid rubber tyres ...	30	0
Additional charge for each trailer with pneumatic tyres...	25	0
For every motor or steam vehicle constructed to carry 1 ton or less than 2 tons ...	50	0
For every motor bus or charabanc constructed to carry 15 or more persons ...	75	0
For every motor bus or charabanc constructed to carry less than 15 persons but more than 7 persons ...	50	0
For every four-wheeled motor vehicle constructed to carry not more than 7 persons but more than 3 persons and plying for hire ...	25	0
For every four-wheeled motor vehicle constructed to carry not more than 7 persons but more than 3 persons and not plying for hire ..	20	0
For every four-wheeled motor vehicle constructed to carry 3 or less persons ...	15	0
For every motor tricycle and every motor bicycle with or without side-car ...	10	0
For every four-wheeled vehicle constructed to be drawn by one or more animals ...	5	0
For every two-wheeled vehicle constructed to be drawn by one or more animals ...	2	0
For every other bicycle or tricycle ...	2	0
For every other carriage not being a child's perambulator or go-cart ...	2	0
For every elephant ...	6	0
For every motor boat or steam launch plying for hire and carrying more than 6 passengers ...	50	0
For every other motor boat or steam launch ...	15	0
For every cabin boat ...	2	14
For every horse, mule or pony ...	2	0
For every bull, bullock, male buffalo, [pig, goat] ass or dog ...	1	0

[(*b*) If within the half year a person replaces any carriage or animal by another carriage or animal falling under the same class in the table given in clause (*a*), the said person, in case the replacement was due to the destruction of the carriage or the death of the animal and if he had possession, custody or control of the carriage or animal so replaced at the time of its destruction or death shall not be liable to more than one payment of tax and the amount of such payment shall be regulated by the aggregate number of days for which the carriage which has been destroyed or the animal which had died and the carriage or animal replacing such carriage or animal has been kept during the half year.]

PART IV.

Tolls

(*See Section 128*).

19. (*a*) Tolls shall be levied at the rates shown in the following tables:—

	Rs.	Ch.	C.
On every motor or steam vehicle constructed to carry one ton or more ...	2	0	0
On every trailor attached thereto ...	1	0	0
On every motor bus constructed to carry 15 or more passengers ...	2	0	0
On every motor vehicle constructed to carry more than 7 but less than 15 passengers ...	1	0	0
On every other four-wheeled motor vehicle ...	0	14	0
On every motor tricycle and every motor bicycle with or without side car ...	0	7	0
On every motor boat or steam launch plying for hire or carrying more than 6 passengers ...	2	0	0
On every other steam boat or steam launch ...	0	14	0
On every cabin boat ...	0	7	0
On every bicycle or tricycle ...	0	3	8
On every other carriage or boat ...	0	3	8
On every horse, buffalo, bull, bullock or ass ...	0	2	0
On every *vallam* ...	0	2	0
On every elephant ...	0	14	0
On every camel ...	0	7	7

(*b*) Payment of a toll in respect of any vehicle covers the animal engaged in drawing it.

(*c*) Not more than a single payment of toll may be demanded in respect of any vehicle or animal during any one period of twenty-four hours counted from midnight to midnight.

PART V.

Revision of Assessment.

(*See Section 142*).

20. Any assessee who is dissatisfied with the assessment of any tax under this Act [other than the property tax] may make an application in writing to the Commissioner for the [revision] of such assessment stating the grounds of his objection thereto.

[21. No application for revision under rule 20 shall be admitted—

(*a*) unless the application has reached the Municipal Office in the case of the companies and profession taxes within fifteen days from the date of service of the notice prescribed by Section 109 and in the case of any other tax within seven days from the date of demand provided that the Commissioner may, if he thinks, fit, extend the period within which notice of objection should be delivered to a period not exceeding one month ; and

(*b*) unless the tax based on the assessment prevailing in the year previous to the year in question was paid before making the application.

Explanation :—The preferring or pendency of an application for the revision of the assessment of any tax shall not—

(*a*) bar the collection thereof, or

(*b*) operate as a stay of proceedings to enforce payment of the same.]

[22. (1) All such applications and all petitions under rule 7, 9 or 10 shall be entered in a register to be maintained for the purpose ; and on receipt of any application or petition, notice shall be given to the applicant or petitioner of a time and place at which his application or petition will be considered.

(2) At the said time and place the Commissioner shall hear the objection in the presence of the objector or his agent if he appears or may for reasonable cause adjourn the investigation.

(3) When the objection has been determined the order passed shall be recorded in the said register together with the date of such order and communicated to the objector or his agent by registered Anchal or Post.]

[23. (1) Where an objector is dissatisfied with the order passed by the Commissioner under sub-rule (3) of rule 22, he may within 15 days from the date on which such order was served on the objector, appeal against it to the Standing Committee.

(2) The appeal shall be heard and decided by the Standing Committee copy of whose decision shall be sent to the applicant by the Commissioner within two days thereof.]

24. (*a*) An appeal shall lie to the District Court of Trivandrum against any decision of the Standing Committee under Rule 23, but no such appeal shall be heard by the said Court unless—

(i) a notice of intention to appeal has been given to the Commissioner within ten days from the date of the decision, and

(ii) the petition of appeal has been presented within fourteen days from the date of the decision and the tax has been paid within the said period.

Explanation. In case of a tax leviable by half-yearly instalments the requiret ments of clause (ii) as to payment of the tax shall be deemed to have been satisfied if the half-yearly instalment due under the order appealed against has been paid.

(*b*) The Court may for sufficient cause excuse delay in the presentation of an appeal.

(*c*) The notice of intention to appeal shall state the name, occupation and residence of the appellant or of his attorney or vakil (if any) and the grounds of appeal.

(*d*) The appellant shall not, except with the leave of the Court, urge or be heard in support of any ground of objection which has not been set forth in his notice of intention to appeal.

[(*e*) The provisions of parts II and III of the Travancore Limitation Act, VI of 1100 relating to appeals shall apply to every appeal preferred under this rule.]

25. The Court may direct who shall bear the costs of an appeal under the above rule.

26. The Court may, if it thinks fit, state a case of any appeal for the decision of the High Court and shall do so whenever a question of law is involved, if either the Commissioner or the appellant applies in writing in that behalf within fifteen days from the decision of the Court and deposits such sum as the Court thinks necessary to defray the cost of the reference.

27. (*a*) The High Court may pass such order as it thinks fit on a reference under Rule 26.

(*b*) Upon production of a copy of the order passed under clause (*a*) the Court shall proceed to dispose of the case in conformity with the terms of the order, and may direct who shall bear the costs of the appeal and reference.

[28. The asessment books maintained by the Commissioner shall be corrected in accordance with the decision of the Standing Committee or where there is an appeal to the District Court in accordance with its judgment under rule 24 or sub-rule (*b*) of rule 27 as the case may be and in the event of the amount of any tax being reduced or remitted by the said Committee or Court, the Commissioner shall grant a refund accordingly]

[29. The assessment or demand or any tax when no application or appeal is made as hereinbefore provided and when such an application or appeal is made, the orders passed by the Commissioner, the decision of the Standing Committee or the adjudication by the Disrtict Court on the appeal, as the case may be, shall be final:

Provided that where any assessment or demand is not in accordance with the assessment books nothing in this rule shall be deemed to prohibit a fresh assessment or demand of the tax being made in accordance therewith.]

PART VI,

COLLECTION OF TAXES.

(*See Section 142.*)

[30. (1) Where any tax not being a tax in respect of which a notice has to be served under Section 109 or Section 118 or a direction has to be given under rule 12 is due from any person the Commissioner shall cause to be served upon or sent to such person a Bill for the sum due before proceeding to enforce the provisions of rule 31.

(2) A notice under Section 109 or Section 118 and a Bill under sub-rule (1) shall be signed by the Commissioner and shall contain—

(*a*) a statement of the period and a description of the occupation, property or thing for which the tax is charged and other particulars of the demand, and

(*b*) notice of the liability which nay be incurred in default of payment.

(3) Where a notice, bill or a direction referred to in sub-rule (1) has not been served or given either in the half-year in which the tax became due or in the succeeding half-year the tax for the half-year first mentioned in this sub-rule shall not be demanded.]

[31. (1) If the amount due on account of any tax is not paid within fifteen days from the service of the notice or bill or the giving of the direction referred to in Section 109 or Section 118 or rule 12 or rule 30 and if the person from whom the tax is due has not shown cause to the satisfaction of the Commissioner why it should not be paid, the Commissioner may recover by distraint under his warrant and sale of the movable property of the defaulter or if the defaulter is the occupier of any building or land in respect of which a tax is due by distress and sale of any movable property which may be found in or on such building or land, the amount due on account of the tax together with the warrant fee and distraint fee and with such further sums as will satisfy the probable charges that will be incurred in connection with the detention and sale of the property so distrained.

Provided always that movable property described in the proviso to sub-section (1) of Section 52 of the Code of Civil Procedure 1100 (Act VIII of 1100) shall not be liable to distraint.

(2) If for any reason the distraint, or a sufficient distraint, of the defaulters property is impracticable the Commissioner may prosecute the defaulter before a Magistrate.

(3) Nothing herein contained shall preclude the Corporation from suing in a Civil Court for the recovery of any tax, duty or other amount due to it under this Act.]

32. Under a special order in writing of the Commissioner any officer charged with execution of a warrant of distress may, between sunrise and sunset, break open any outer or inner door or window of a building in order to make the distress, if he has reasonable ground for believing that such building contains property which is liable to seizure, and if, after notifying his authority and purpose, and duly demanding admittance, he cannot other wise obtain admittance:

Provided that such officer shall not enter or break open the door of any apartment appropriated to women until he has given three hours notice of his intention and has given such women an opportunity to withdraw.

[33. The Officer charged with the execution of a warrant, shall, before making the distraint, demand payment of the tax due and the warrant fee. If the tax and fee are paid no distraint shall be made but if the tax or fee is not paid, the Officer shall –

(*a*) seize such movable property of the defaulter as he may think necessary;

(*b*) make an inventory of the property seized; and

(*c*) give to the person in possession of the property seized at the time of seizure a copy of the inventory and the notice of sale:

Provided that a period of seven days shall be allowed for paying the amounts due and redeeming the property seized.]

34. The distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible [equal in value to the Tax] due by the defaulter together, with all expenses incidental to the warrant, distraint, detention and sale,

[35. (1) If the amount due by the defaulter on account of the tax, the warrant fee and distraint fee and the expenses incidental to the detention of the property are not paid within the period of seven days mentioned in the notice given under rule 33 and if the distraint warrant is not suspended by the Commissioner, the property seized or a sufficient portion thereof, shall be sold by public auction under the orders of the Commissioner who shall apply the proceeds of the sale to the payment of the amount due on account of the tax, the

warrant fee and the distraint fee and the expenses incidental to the detention and sale of the property, and shall return to the person in whose possession the property was at the time of seizure any property or sum which may remain after the sale and the application of the proceeds thereof as aforesaid if application is made by such person within twelve months from the date of the sale. If no such application is made, the property or sum so remaining shall be forfeited to the Corporation. If the proceeds of the sale are insufficient for the payment of the amount due on account of the tax, the warrant fee and distraint fee and the expenses incidental to the detention and sale of the property, the Commissioner may again proceed under rules 31 and 32 in respect of the sum remaining unpaid.

(2) When the property seized is perishable or subject to speedy and natural decay or if the expense of keeping it will, together with the amount of tax due, exceed the value of the property, the Commissioner may sell it at any time before the expiry of the said period of seven days unless the amount due is sooner paid.

(3) The Commissioner shall consider any objections to the distraint of any property which are made within the said period of seven days and may postpone the sale pending investigation thereof. If the Commissioner decides that the property attached was not liable to distraint, he shall return it, or if it has already been sold, the proceeds of the sale to the person appearing to be entitled thereto and may again proceed under rules 31 and 32; and all fees and expenses connected with the first distraint and sale shall be recoverable from the defaulter if it shall appear to the Commissioner that he wilfully permitted the distraint of the property when to his knowledge it was not liable to distraint.

36. (*a*) Fees shall be levied on distraints under this Act with reference to the value of the property distrained and according to the rates specified in the following table:—

Value of property.		*Amount of fee.* Rs.	Chs.	C.
Under ten rupees	...	0	4	0
Ten and under twenty five rupees	...	0	7	0
Twenty-five and under fifty rupees	...	1	0	0
Fifty and under one hundred rupees	...	2	0	0
One hundred rupees and upwards	...	3	0	0

(*b*) Fees levied under this rule are not intended to cover the cost of maintaining any livestock distrained.

[(*c*) The cost of maintaining livestock distrained shall be determined from time to time by the Commissioner.]

37. (*a*) The movable property of a defaulter may be distrained wherever it may be found within Travancore.

(*b*) If it is necessary to distrain property outside the limits of the City, the Commissioner shall address his warrant to such public servant having local jurisdiction as Our Government may by general or special order direct.

(*c*) Such public servant shall execute the warrant himself or cause it to be executed by some person subordinate to himself.

(*d*) Subject to the modifications set out in the following clauses, the provisions of Rules 32 to 36 (both inclusive) shall apply to the execution of the warrant and the disposal of the sale proceeds.

(*e*) For the purpose of action under Rule 32, no special order in writing of the Commissioner shall be required, but if the public servant to whom the warrant is addressed charges any subordinate with the execution thereof, he shall furnish such sub-ordinate with a special order in writing to that effect, and such subordinate shall then have authority to take action under the rule.

(*f*) For the purpose of action under Rule 35, the public servant to whom the warrant is addressed may, without further orders from the Commissioner, sell or direct the sale of the property seized and shall on completion of the sale transmit the proceeds to the Commissioner, subject to such deduction, if any, as may be necessary to meet expenses incurred locally.

(*g*) It shall be unlawful for such public servant himself or for any person subordinate to him to purchase directly or indirectly any property at any such sale.

38. If the tax due on account of any building or land remains unpaid in whole or in part at the end of the period specified in sub-rule (1) of rule 31, the Commissioner may if the said tax has not remained unpaid for more than twelve months require the occupier for the time being of such building or land to pay the amount within a specified period not being less than fifteen days and if the occupier fails to comply with such requisition the Commissioner may distrain and sell any movable property found in the building or land and the provisions of the foregoing rules shall *mutatis mutandis* apply to all distraints and sales effected under this rule:

Provided that no occupier shall be liable to prosecution or to a civil suit in respect of any sum recoverable from him under this rule unless he has wilfully prevented distraint or a sufficient distraint.

[39. If any tax due from any person remains unpaid in whole or in part at the end of the period specified in sub-rule (1) of rule 31 and if such person has left Travancore or cannot be found, the said tax or such part thereof as remains unpaid together with all sums payable in connection therewith shall be recoverable as if it were an arrear of land revenue.

40. (1) Every person who is prosecuted under sub-rule (2) of rule 31 shall be liable on proof to the satisfaction of the Magistrate that he wilfully omitted to pay the amount due by him to pay a fine not exceeding twice the amount which may be due by him on account of—

(*a*) the tax and the warrant fee, if any, and

(*b*) if distraint has taken place, the distraint fee and the expenses incidental to the detention and sale, if any, of the property distrained.

(2) Whenever any person is convicted of an offence under sub-rule (1) the Magistrate shall in addition to any fine which may be imposed recover summarily and pay over to the Corporation, the amounts, if any, due under the heads specified in clauses (*a*) and (*b*) of sub-rule (1), and may in his discretion also recover summarily and pay to the Corporation such amount if any as he may fix as the costs of the prosecution.

41. Neither the Commissioner nor any Municipal Officer or servant shall directly or indirectly purchase any property at any sale of distrained property held under the foregoing rules.

PART VII.

MISCELLANEOUS.

(See Section 142.)

42. The Commissioner shall keep separate accounts of all moneys received and texpended for any purpose connected with (*a*) the water and drainage tax, and (*b*) the lighting tax.

43. [In] these Rules the expression 'tax' includes payments due by way of composition for a tax.

SCHEDULE III.

Financial Rules.

(See Section 145.)

PART I.

Authorised expenditure.

1. The objects on which the Municipal Fund may be spent include those expressly declared obligatory by laws or rules, those which the laws or rules expressly give the Corporation a discretion to undertake, and in general, all matters necessary for, or conducive to the safety, health, convenience or education of the citizens of Trivandrum or the amenities of the City and all matters incidental to the administration.

2. The objects of expenditure connected with the public safety including the following :—

(a) Lighting of public streets and the provision, purchase, exploitation and maintenance of gas, electric or other undertakings for lighting public and private streets, places and buildings.

(b) Extinction of fires.

(c) Control, supervision or removal of dangerous places, buildings, trades and practices.

(d) Regulation of traffic.

(e) Prevention and removal of obstructions in streets or public places.

3. The [objects] of expenditure connected with the public health include the following :—

(a) The construction and maintenance of hospitals, [dispensaries] and temporary places of reception within or without the City for the treatment of infectious diseases occurring in the City; building hospitals and dispensaries and places of reception for the sick in general ; contributing towards hospitals, dispensaries or places of reception provided by Our Government ; contracting for the use of a hospital or part of a hospital, dispensary, or place of reception ; combining with any other local authority or with Our Government to provide a common hospital, dispensary or place of reception, sending indigent inhabitants of the City to institutions outside the City for treatment ; the training of health officers; medical subordinates, sanitary inspectors and analysts ; the training of [midwives] and nurses and the provision of nurses for attendance on patients suffering from infectious diseases at the houses of such persons; [the provision of health visitors and midwives for attendance on maternity cases] vaccination and the training and supervision of vaccinators and the provision of lymph; the registration of births and deaths [the ennumeration of inhabitants of the city] and other measures of a like nature

(b) The construction, establishment maintenance, supervision and control of public markets and slaughter-houses : [of shops, stalls, and plantho] of latrines; of drains and drainage works ; or sewage ; or sewage farms ; of tramways and [all works] for the removal [or disposal] of sewage ; [tram ways] of water-works, drinking fountains, tanks and wells : of wash-houses or *dhobikhanas* : of parks, squares and gardens ; the reclamation of unhealthy localities ; and other sanitary measures of a like nature.

(c) The cleansing and watering of streets and drains; scavenging; the removal of excessive or noxious vegetation; the abatement of all nuisances.

(d) The regulation and control of offensive or dangerous trades, of unhealthy buildings or localities, and of burial and burning grounds

and crematoria ; [improvement of burial and burning grounds and crematoria] and the provision of sites for and the closing of burial and burning grounds; the provision of new sites [whether within or without municipal limits] for offensive and dangerous trades and of special locations for factories; the acquisition of congested areas and the provision of new sites to relieve congestion or to provide for the growth of population ; improvemen' and reclamation of land, planning, surveying and control of town extensions, whether within or without the Municipal limits; redistribution of sites in such extensions, and all measures of a like nature.

4. The objects of expenditure connected with the public convenience, amenities and education include:—

(*a*) The construction, maintenance, diversion and improvement of streets, bridges causeways, culverts and the like ; the regulation of building; the construction of model dwellings [and the encouragement of co-operative building societies by loans grants of land or prizes, the removal of projections and encroachments. naming of streets,the numbering of houses ; the planting and preservation of trees in public streets and places; the main tenance of public monuments.

(*b*) The construction, maintenance, alteration and adornment of public halls and theatres; the acquisition and maintenance of recreation grounds, playing-fields and promenades.

(*c*) Subject to all provisions of law the construction, maintenance, purchase or exploitation of tramways and other transport services, railways not included [of telephone systems] grass farms, dairies, public bakeries and other [agricultural industrial or trading concerns] of public utility, whether within or without the Municipal limits and whether or not in combination with other authorities or persons, and subscription to debenture loans of any such concern.

(*d*) The employment of veterinary officers, the prevention of diseases of animals, the provision of places for the treatment of sick animals, and the prevention of cruelty to animals ;

(*e*) The provision and maintenance of zoological and horticultural gardens.

(*f*) The provision and maintenance of public libraries and reading-rooms, museums, art galleries, gymnasia or any other institutions connected with the diffusion of mental or physical culture.

(*g*) The provision and maintenance of public baths and bathing places.

(*h*) The provision of music for the people.

(*i*) The provision and maintenance of public clocks and clock-towers or of a time gun.

(*j*) The construction and maintenance of school-houses.

(*k*) Primary education.

(*l*) Technical and industrial education.

(*m*) The training of teachers.

(*n*) The provision of standard weights and measures, and of public weighing places.

(*o*) The holding of exhibitions or fairs.

(*p*) The provision and maintenance of rest-houses, choultries, alms-houses, poorhouses [homes or settlements for beggers, work-houses infirmaries and children's homes] pounds and other works of public utility.

(*q*) The organisation and maintenance of health associations [and the provision and organisation of health propaganda work on slums and other areas.]

(*r*) The organisation and maintenance of [maternity and child welfare centres and] associations for the prevention of juvenile smoking and cruelty to children and training of health visitors, [the provision and maintenance of rescue homes.]

5. The objects of expenditure incidental to the administration include :--

(*a*) The provision and maintenance of a principal Municipal office and record room and of other offices with the cost of appurtenances and fittings and insurance.

(*b*) Salaries, allowances, liveries, pensionary and provident fund contributions, gratuities and pensions and the cost or hire of vehicles for the Commissioner and the Municipal officers and servants; study leave allowances of professional officers and subordinates ; sending Municipal servants to any hospital or institute for treatment; the purchase of provisions and other necessaries for sale to Municipal subordinates.

Explanation.—' Salary ' for the purpose of this Rule shall include the privilege, if any, granted by the Corporation of receiving payments in kind in lieu of whole or a portion of the salary by purchasing articles from the Corporation at such prices as the Corporation may fix from time to time.

(*c*) Stationery, printing and all office and advertising expenses including the cost of reporting the discussions of the Councils.

(*d*) Legal expenses.

(*e*) The expenses of conducting elections.

(*f*) Auditor's fees.

(*g*) The provision and maintenance of Municipal workshops

(*h*) Municipal surveys, the preparation of maps of the City and of proposed extentions.

(*i*) The preparation and maintenance of a record of rights in immovable property.

(*j*) The acquisition of land for all or any of the purposes of the Act.

6. If the expenditure incurred by any other local authority in Travancore for any purpose described in these Rules is such as to benefit the inhabitants of the City, the Commissioner may, with the sanction of the Council, contribute towards such expenditure.

7. The Commissioner may, with the sanction of the Council, contribute towards the expenses of any public exhibition, ceremony, or entertainment in the City.

8. The Commissioner may, with the sanction of the Council, defray the cost of the preparation ar presentation of addresses to persons of distinction.

9. The Commissioner may with the sanction of the Council and of Our Government contribute to any charitable funds of any institution for the relief of the poor or the treatment of the disease or infirmity or the reception of the diseased or infirm persons or the investigation of the causes of disease or incur any other extraordinary charges.

PART II.

Receipts and Payments.

10. All moneys received by the Corporation shall be lodged in the Trivandrum Divisional Treasury or, with the sanction of Our Government, in any bank, and shall be credited to an account entitled the "Municipal Fund Account."

11. (1) All orders or cheques against the Municipal Fund shall be signed by the Commissioner and the Treasury or the bank in which the Fund is lodged shall, so far as the funds to the credit of the Corporation admit pay all orders or cheques against the fund which are so signed.

[(2) If the council shall have given previous authority in writing, such treasury or bank may atonce pay out of the municipal fund without such order or cheque any expense which Our Government have incurred on behalf of the Corporation.]

12. The payment of any sum out of the Municipal Fund may be made or authorised by the Commissioner if such sum is covered by a budget grant and sufficient balance of such budget grant is available.

13. The paymemt of any sum out of the Municipal Fund may be made or authorised by the Commissioner in the absence of budget provision in the case of—

(*a*) refunds of taxes and other moneys authorised by law, rule, bye-law or regulation;

(*b*) repayments of moneys belonging to contractors or other persons and held in deposit and of moneys collected or credited to the Municipal Fund by mistake;

(*c*) costs incurred by the Commissioner in the exercise of his powers under Section 11 of the Act;

(*d*) sums payable under Section 43, sub-section (1), clause (*c*), and Section 147, sub-section (2) of the Act;

(*e*) sums payable under a decree or order of a civil court passed against the Corporation or under a compromise of any suit or legal proceeding or claim;

(*f*) any sum which the Commissioner is required by law, rule, by-law or regulation to pay by way of compensation or expenses;

(*g*) the salary payable to a special health officer appointed under Section 88 of the Act; and

(*h*) expenses incurred by the Commissioner under Section 327, sub-section (3), and expenses lawfully incurred in anticipation of recoupment from a person liable under any provision of law:

Provided that the Commissioner shall forthwith communicate the circumstances to the Standing Committee which shall take any action that may in the circumstances be necessary or expedient to cover any expenditure not covered by a budget grant.

14. The Commissioner shall not overdraw.

PART III.

Audit surcharge and disallowance.

15. The auditors appointed under Section 134 shall maintain and keep a continuous audit of the Municipal accounts.

16. The Commissioner shall submit all accounts to the auditors as required by them.

17. The auditors may—

(*a*) by summons in writing require the production of any document, the perusal or examination of which they believe necessary for the elucidation of the accounts;

(*b*) by summons in writing require any person having the custody or control of any such document or accountable for it to appear in person before them;

(*c*) require any person so appearing to make and sign a declaration with respect to such document or to answer any question or to prepare and furnish any statement relating thereto.

18. The auditors shall—

(*a*) report to the Standing Committee any material impropriety or irregularity which they may observe in the expenditure, or in the recovery of moneys due to the Corporation or in the Municipal accounts;

(*b*) furnish to the Standing Committee such information as the said Committee may require concerning the progress of their audit;

(*c*) report to the Standing Committee any loss or waste of money or other property owned by or vested in the Council caused by neglect or misconduct, with the names of persons, directly or indirectly responsible for such loss or waste ; and

(*d*) submit to the Standing Committee a final statement of the audit and a duplicate copy thereof to Our Government within a period of three months from the end of the financial year, or within such other period as Our Government may notify.

19. (1) The Standing Committee shall forthwith remedy any defects or irregularities that may be pointed out by the auditors and report the same to the Council.

[(2) The Council shall submit its remarks on the audit report, if any, to Our Government within six months after the receipt of the report by the Corporation].

20. (1) The auditors shall disallow every item contrary to law and surcharge the same on the person making or authorising [the making of] the illegal payment; and shall charge against any person responsible therefor, the amount of any deficiency or loss incurred by the negligence or mis-conduct of that person or of any sum which ought to have been but is not brought into account by that person and shall, in every such case, certify the amount due from such person.

(2) The auditors shall state in writing the reasons for their decision in respect of every disallowance, surcharge or charge and furnish [by registered Anchal or Post] a copy thereof to the person against whom it is made.

[(3) If the person to whom a copy of the auditor's decision is so furnished refuses to receive it, he shall nevertheless be deemed to have been duly furnished with copy of such decision within the meaning of sub-rule (2). The period of fourteen days fixed in rules 21 and 22 shall be calculated from the date of such refusal.]

21. Any person aggrieved by disallowance, surcharge or charge made, may within fourteen days after he has received or been served with the decision of the auditor, apply to the District Court of Trivandrum, to set aside such disallowance, surcharge or charge and the Court, after taking such evidence as is necessary may confirm, modify or remit such disallowance, surcharge or charge with such orders as to costs as it may think proper in the circumstances : or in lieu of such application any person so aggrieved may appeal to Our Government who shall pass such orders as they think fit.

22. Every sum certified to be due from any person by auditors under this Act shall be paid by such person to the Commissioner within fourteen days after the intimation to him of the decision of the auditors unless within that time such person has appealed to the Court or to Our

Government against the decision ; and such sum if not so paid, or such sum as the Court or Our Government shall declare to be due, shall be recoverable on an application [made by the Commissioner] to the Court in the same way as an amount decreed by the Court.

23. The Corporation shall pay to the auditors out of the Municipal Fund such remuneration as Our Government may determine.

PART IV.

Form of Accounts.

24. The Council shall make regulations, subject to the approval of Our Government to provide for --

(*a*) the form in which the budget estimates, budget statements and returns of the Corporation shall be kept ; and

(*b*) the form in which the accounts of the Corporation shall be kept.

SCHEDULE IV.

Purposes for which premises may not under Section 295 be used without a licence.

(*See Section 295.*)

Aerated waters— Manufacturing.

Aloe fibre and yarn Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatsoever.

Ammunition—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatsoever.

Articles made of flour Baking, preparing, keeping or storing for human consumption (for other than domestic use).

Ashes—Storing, packing, pressing cleansing, preparing or manufacturing by any process whatever, dumping or sifting.

Biscuits— Baking, preparing, keeping or storing for human consumption (for other than domestic use).

Blood Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Bones —Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Bread—Baking, preparing, keeping or storing for human consumption (for other than domestic use.)

Bricks —Manufacturing.

Camphor —Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever or boiling.

Candles—Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Carpets— Manufacturing.

Catgut—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Cement—Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Charcoal Dumping, sifting, selling or storing.

Chemical preparations—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Chillies—Grinding by machinery.

Chillies (dried)—Selling wholesale or storing for wholesale trade.

Chlorate mixture—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Cinders—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever, dumping or sifting.

Cloths—Dyeing.

Coal—Dumping, sifting, selling or storing.

Coconut fibre—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Coir yarn— do. do.

Combustible material—Storing.

Comestibles—Baking, preparing, keeping or storing for human consumption (for other than domestic use.)

Condiments—Manufacturing.

Confectionery—Baking, preparing, keeping or storing for human consumption (for other than domestic use).

Cotton, cotton refuse, cotton seed—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Cowdung cakes—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Dyes—Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Explosive—Storing.

Fibre—Selling or storing.

Fat—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Fins—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Firewood—Selling or storing.

Fireworks—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Fish—Storing, packing pressing, cleansing, preparing or manufacturing by any process whatever.

Fishoil—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Flax—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Fleshings—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Flour - Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Fuel—Using for any industrial purpose.

Fulminate of mercury—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Garlic—Storing or packing.

Gas—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Ghee—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Gold—Refining.

Grain—Selling wholesale or storing for wholesale trade.

Gram—Husking by machinery.

Grass—Selling or storing.

Groundnut—Selling wholesale or storing for wholesale trade.

Gun cotton—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Gunny-bag—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Gunpowder—Storing, packing, pressing, preparing or manufacturing by any process whatever.

Hair—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever, dyeing, or drying.

Hay—Selling or storing

Hemp—Storing, packing, pressing, cleansing preparing or manufacturing by any process whatever.

Hides—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Hoofs—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Horns—Storing, packing, cleansing, preparing or manufacturing by any process whatever.

Ice—Manufacturing.

Jaggery—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever, or selling wholesale.

Jute—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Kalthi—Preparing.

Lac—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Lead—Melting

Leather—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Lime—Storing, packing, pressing, cleansing preparing or manufacturing by any process whatever.

Limeshells—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Manure—Storing, packing, pressing cleansing, preparing or manufacturing by any process whatever.

Machinery—Using for any industrial purpose.

Matches—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever

Meat—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Metals—Beating, breaking, hammering, casting, etc.

Nitro-compound—Storing, packing, pressing cleansing, preparing or manufacturing by any process whatever.

Nitro-glycerine—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Nitro-mixture—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Offal—Storing, packing, pressing cleansing, preparing or manufacturing by any process whatever.

Oil—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever or boiling.

Oil-cloth—Storing, packing, pressing, preparing or manufacturing by any process whatever.

Onions—Storing or packing.

Paddy—Boiling or husking by machinery.

Paper—Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Petroleum products—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Pitch—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Pottery—Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Rugs—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Resin (including rosin)—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Sago—Manufacturing or distilling.

Saltpetre—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Seekai—Powdering by machinery.

Shellac—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Silk—Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Skins—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Soap—Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Spirits—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Straw—Selling or storing,

Sugar—Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Sugar-candy—Packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Sulphur—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever, or melting.

Surki—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Sweet-meats—Baking, preparing, keeping or storing, for human consumption (for other than domestic use).

Tallow—Storing, packing pressing, cleansing, preparing or manufacturing by any process whatever or melting.

Tar—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Thatching materials – Selling or storing.

Tiles—Manufacturing.

Timber—Selling or storing.

[Tobacco (including snuff, cigars, cigarettes and beedies) – Storing packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Turpentine—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever.

Wool—Storing, packing, pressing, cleansing, preparing or manufacturing by any process whatever, dyeing or drying.

Yarn – Dyeing.

Provided that no licence shall be required for the storage only of any of the articles mentioned in this Schedule or for boiling paddy when such storage or boiling is for domestic use and limited to such quantities as may from time to time be fixed by the Commissioner.

Guilding or electro-plating

Keeping a shaving or hair dressing saloon.

Keeping together pigs, or ten or more sheep or goats or five or more head of cattle.

Manufacturing articles from which offensive or unwholesome smells, fumes, dust or noise arise.

Washing soiled clothes and keeping soiled clothes for the purpose of washing them and keeping washed clothes.

In general, any purpose or the doing in the course of any indus rial process anything which in the opinion of the Commissioner is likely to be dangerous to human life, or health or property or is likely to create or cause a nuisance.]

SCHEDULE V.

Ordinary Penalties.

[*See Section 375* (1).]

1		2	3
Section or Rule.	Sub-section or clause.	Subject.	Fine which may be imposed.
[35	(1)	Interested Councillors voting or taking part in discussion	Two hundred rupees]
102	(1) & (3)	Failure to give notice of transfer of title or to produce documents	Twenty-five rupees.
103	(1)	Failure to send notice to Commissioner after completion of construction or reconstruction of building	do.
105	...	Failure of owner or occupier to furnish return of rent, etc.	Fifty rupees.
110	...	Failure of owner or occupier to furnish list of persons liable to tax	do.
111	...	Failure of employer or his representative to furnish list of persons liable to tax	do.
117	...	Failure of occupier to obey requisition to furnish statement of vehicles and animals liable to taxation or furnishing incorrect statement, etc.	Five rupees,
118	(2)	Failure of person liable to pay tax on carriages and animals to comply with requisition to furnish statements for vehicles and animals or furnishing incorrect statement	Ten rupees.
120	(1)& (2)	Failure [to comply with] or to affix register number of carriage	Five rupees.
122	(2)	Failure of owner to register cart	do.
"	(3)	Failure to have or keep registration number affixed to cart	do.
138	...	Attempt to evade payment of toll	Twenty-five rupees.
170	...	Trespassing on premises connected with water supply	do.
172	...	Failure to maintain house connections in conformity with bye-laws	do.
173	(2) & (4)	Failure to [comply with] requisition to make house connection	do.
"	(3)	Occupying or allowing occupation of house without proper water supply	do.

1		2	3
Section or Rule.	Sub-section or clause.	Subject.	Fine which may be imposed.
180	...	Failure to maintain house drains, etc., in conformity with bye-laws ..	Twenty-five rupees.
181	(2) & (3)	Failure to [comply with] requisition as to house drainage ...	Twenty-five rupees.
	(4)	Occupying or allowing occupation of house without proper drainage ...	One hundred rupees.
183	1 (*b*)	Failure to [comply with] direction as to limited use for drain or notice requiring construction of distinct drain ...	Twenty-five rupees.
184	(1)	Unlawful construction of building over public drain ...	Fifty rupees.
185	...	Failure to [comply with] requisition regarding culverts or to keep them free from obstruction ...	Twenty-five rupees.
186	...	Failure to comply with requisition to maintain troughs and pipes for catching etc., water from roof or other part of building ...	Twenty-five rupees.
188	...	Failure to [comply with] requisition to provide latrine or to remove latrine to another site and failure to keep latrines clean and in proper order ...	Twenty-five rupees.
189	...	Failure to provide latrines for premises used by large numbers of people or to keep them clean and in proper order ...	Fifty rupees.
190	...	Failure to comply with requisition to provide latrines for market, cattle stand or cart-stand, or to keep them clean and in proper order ...	Fifty rupees.
191	...	Failure to construct latrines so as to screen persons using them from view ...	Ten rupees.
193	...	Making connection with mains without permission ...	One hundred rupees.

1		2	3
Section or Rule.	Sub-section or clause.	Subject.	Fine which may be imposed.
197	(1)	Failure of occupier to comply with direction to collect rubbish and filth and deposit them in a box or basket or other receptacle of his own or near premises ...	Five rupees.
"	(2)	Failure to comply with direction to collect rubbish and filth accumulating in latrine and to deposit in Municipal carts ...	Five rupees.
"	(3)	Failure to comply with direction to collect rubbish and filth and deposit them in public receptacle ...	Five rupees.
198	(a)	Failure to comply with direction to collect and remove rubbish and filth accumulating on business premises ...	Five rupees.
201	(1)	Allowing rubbish or filth to accumulate on premises for more than twenty-four hours ...	Ten rupees.
"	(2)	Irregular deposit of rubbish or filth ...	Five rupees.
"	[(3)	Depositing carcasses of animals, rubbish or filth in improper places ...	Twenty rupees.]
"	(4)	Keeping rubbish or filth for more than twenty-four hours, etc. ...	Five rupees.
"	(5)	Allowing filth to flow in streets ...	Ten rupees.
211	...	Building within street alignment or building line without permission ...	Five hundred rupees
212	(1)	Failure to comply with orders to set back buildings ...	Five hundred rupees.
217	...	Unlawful displacement, etc., of pavement or fences, posts, and other materials of public street ...	Twenty-five rpuees.
218	...	Failure to provide streets or roads on building sites prior to disposal ...	Two hundred rupees.
219	...	Unlawful making or laying of new street ...	Two hundred and fifty rupees.
221	...	Failure to comply with requisition to metal, etc., private street ...	Fifty rupees.

1		2	3
Section or Rule.	Sub-section or clause.	Subject.	Fine which may be imposed.
223	...	Building wall or erecting fence, etc., in a street or any public place vested in the control of the Corporation ...	Fifty rupees.
224	...	Allowing doors, ground-floor windows, etc., to open outwards without licence or contrary to notice ...	Ten rupees.
225	...	Failure to remove permanent encroachments ...	One hundred rupees.
226	...	Failure to remove temporary encroachments ...	Twenty-five rupees.
228	...	Unlawful removal of bar, or storing of timber, etc. or removal or extinction of light ...	Twenty-five rupees.
229	(1)	Unlawful making of hole or placing of obstruction in street ...	Twenty-five rupees.
"	(3)	Failure to remove obstruction ...	Twenty-five rupees.
230	...	Construction, etc., of building without licence where street or footway is likely to be obstructed ...	Twenty-five rupees.
"	...	Failure to fence, etc., such building while under repair ...	Twenty-five rupees.
231	(3)	Unlawful destruction, etc., of name of street ...	Ten rupees
232	(2)	Unlawful destruction, etc., of number of building ...	Ten rupees.
"	(3)	Failure to replace number when required to do so ...	Ten rupees.
234	(5)	Constructing or re-constructing buildings contrary to declaration issued by Council.	Two hundred rupees.
235	(1)	Failure to complay with requisition to round or splay off buildings at corners of streets ...	One hundred rupees.
236	...	Construction, reconstruction or retention of external roof, etc., with inflammable materials ...	Twenty-five rupees.

1		2	3
Section or Rule.	Sub-section or clause.	Subject.	Fine which may be imposed.
257	...	Failure to keep external walls of premises in proper repair ...	Ten rupees.
261	...	Failure to comply with requisition to take down, repair or secure dangerous structure ...	Two hundred and fifty rupees.
262	...	Failure to comply with requisition to secure, lop, or cut down dangerous tree ...	Twenty-five rupees.
263	...	Failure to comply with requisition to repair, etc., tank or other place dangerous to passers-by or persons living in neighbourhood ...	Twenty-five rupees
264	...	Failure to comply with notice regarding precautions against fire ...	Fifty rupees.
265	(1)	Constructing well, etc., without Permission..	Twenty-five rupees.
	(3)	Failure to comply with notice to fill up or demolish well, etc. ...	Twenty-five rupees.
266	...	Failure to comply with requisition to stop dangerous quarrying ...	Fifty rupees.
267	(1)	Failure to comply with requisition to fill up, etc., tank or well or drain off water, etc. ...	Twenty-five rupees.
	(3)	Cultivating contrary to prohibitions or regulations ...	Two-hundred rupees.
268	...	Failure to comply with requisition to cleanse or close, etc., tank, well or other source of water used for drinking bathing or washing clothes ...	Twenty-five rupees.
270	...	Unlawful washing and fishing in river, or estuary after prohibition or contrary to regulations ...	Ten rupees.
271		Defiling water in tanks, etc. ...	Twenty-five rupees.
272	...	Failure to comply with requisition to enclose, clear or cleanse untenanted premises ...	Twenty-five rupees.

1		2	3
Section or Rule.	Sub-section or clause.	Subject.	Fine which may be imposed.
273	...	Failure to comply with requisition to clear or cleanse, etc., building or land in filthy state or overgrown [with any thick or noxious vegetation] ...	One hundred rupees.
274	...	Failure to comply with requisition to abate nuisance caused or likely to be caused by dumping, etc. of coal, ashes, etc. ...	One hundred rupees.
275	...	Failure to comply with requisition to fence building or land or trim, prune or cut hedges and trees or lower an enclosing wall ...	Twenty-five rupees.
276	..	Failure to comply with requisition to lime-wash or otherwise cleanse building ...	Twenty-five rupees.
277	...	Failure to comply with requisition to execute work or take other action with respect to insanitary buildings ...	Fifty-rupees in the case of masonry building and twenty-five rupees in the case of hut.
278	(2)	Using or allowing the use of builpings unfit for human habitation after prohibition..	Ten rupees for each day.
	(4)	Failure to comply with requisition to demolish the same ...	Ten rupees for each day.
279	(1)	Allowing over-crowding in building after order to abate the same ...	Ten rupees for each day.
	(4)	Failure to comply with requisition to vacate overcrowded building or room ...	Ten rupees for each day.
283	(1)	Keeping a lodging house, eating house, tea shop, etc., without licence, or contrary to licence ...	One hundred rupees.
284	(a)	Unlawful keeping of pigs ...	Ten rupees.
	(b)	Unlawful keeping of animal so as to be a nuisance or danger ...	Ten rupees.
	(c)	Feeding of animals on filth ...	Ten rupees.
286	...	Use of place as stable, cattle shed, etc., without licence or contrary to licence...	Twenty-five rupees.

1		2	
Section or Rule.	Sub-section or clause.	Subject.	Fine which may be imposed.
288	...	Construction or maintenance of stable, cattle shed, etc, contrary to regulation or subsidiary legislation ...	Twenty-five rupees.
290	...	Using a public place or the sides of a public street as a public landing place etc. ...	Twenty rupees.
292	(1)	Opening or keeping open or a new private cart stand without licence contrary to license ...	Two hundred rupees.
293	...	Failure to remove carcass of animal ...	Ten rupees.
294	...	Use of places for public entertainment without licence ...	Two hundred rupees.
295	(1)	Using a place for any of the purposes specified in schedule IV without licence or contrary to licence ...	Two hundred rupees.
296	(1), (2) & (3)	Unlawful erection of factory, workshop, work place or machinery ...	One hundred rupees
	(5)	Disobedience of order regarding chimneys...	Five hundred rupees,
297	(1)	do. the abatement of nuisance ...	One hundred rupees.
	(2)	Disobedience of order prohibiting the working of factory, etc., or the use of particular fuel ...	Two hundred rupees.
298	...	Failure to comply with requisition to put factory etc. in order to abate overcrowding etc. ...	Five hundred rupees.
299	...	Disobedience of order regarding abatement of nuisance or danger to life, etc. ...	One hundred rupees.
304	(2)	Washing of clothes by washermen at unauthorised places ...	Ten rupees.
306	...	Use of place as slaughter-house without licence or contrary to licence ...	One hundred rupees.
308	...	Slaughter of animals for sale or food or skinning or cutting up carcasses without licence or contrary to licence or drying skin so as to cause a nuisance ...	Ten rupees for evrey animal, carcass or skin.

1		2	3
Section or Rule.	Sub-section or clause.	Subject.	Fine which may be imposed.
310	...	Carrying on milk trade without license or contrary to licence ...	Twenty-five rupees.
313	...	Sale or exposure for sale in public markets of animal or article without permission or contrary to permission ...	Twenty-five rupees.
314	(2)	Opening private market without licence or contrary to licence ...	Two hundred and fifty rupees.
315	...	Keeping open private market without licence or contrary to license ...	Two hundred and fifty rupees.
318	...	Sale or exposure for sale of animal or article in unlicensed private market ...	Twenty-five rupees
319	...	Failure to comply with direction to construct approaches, drains, etc., to private markets or to pave them, etc.	Twenty-five rupees.
320	(2)	Opening or keeping opens of private market after suspension or refusal of licence for default to carry out works ...	Twenty-five rupees for each day.
321	...	Breach of market Regulations ...	Twenty-five rupees.
[323	...	Failure of person in charge of markets to expel person suffering from leprosy or other infectious or contageous disease...	Twenty-five rupees.]
324	...	Carrying on butchers', fishmongers' or poulterers' trade without licence, etc.	Fifty rupees.
[325	...	Sale or exposure for sale of animal or article in public streets ...	Ten rupees.]
329	...	Preventing the Commissioner or any person authorised by him from exercising his power of entry, etc, under Section 306 ...	Twenty-five rupees.
331	...	Removing or in any way interfering with an animal or article secured under Section 308 ...	Two hundred and fifty rupees.
[335	(1)	Opening etc., without license a new place for the disposal of the dead ...	Fifty rupees]
337	(4)	Use or allowance of use of unlicensed burial or burning ground ...	Two hundred and fifty rupees.
	(4)	Use or allowance of use of unregistered burial or burning ground ...	Fifty rupees.
338	...	Failure to give information of burials or burnings in burial or burning ground...	Ten rupees.

1		2	3
Section or Rule	Sub-section or clause.	Subject	Fine which may be imposed
339	...	Construction of vault or grave or burial of corpse in place of public worship ...	Two hundred and fifty rupees.
340	(3)	Burial or burning in place after prohibition ...	One hundred rupees.
341	...	Burial or burning etc., of corpses ...	Twenty five rupees.
343	...	Discharge of office of grave digger or attendant at place for disposal of dead without licence ...	Ten rupees.
346	...	Failure of medical Practitioner or owner or occupier to give information of existence of dangerous disease in private or public dwelling ...	Twenty-five rupees.
350	...	Failure to comply with requisition to cleanse or disinfect building or article ...	Twenty-five rupees.
352	(2)	Washing of infected article at unauthorised places ...	Twenty five rupees.
353	...	Giving, lending, etc, of infected places ...	Twenty-five rupees.
[354	...	Infected person carrying on occupation ...	Twenty-five rupees]
355	(1)	Entry of infected person into public conveyance without notifying fact of infection ...	Twenty-five rupees.
356	(1)	Failure to disinfect public conveyance etc.	Twentp-five rupees.
,,	(2)	Using before obtaining certificate from Health Officer a public conveyance in which an infected person travelled.	Twenty-five rupees.
357	...	Letting or sub-letting of infected building without certificate from the Health Officer ...	One hundred rupees.
358	...	Failure to close place of public entertainment ...	One hundred rupees.
359	...	Sending infected child to school ...	Twenty-five rupees.
360	...	Use or permitting use of book from public or circulating library by infected person ...	Twenty-five rupees.
[361	...	Using water after prohibition ...	Twenty-five rupees.]
363	...	Failure to give information of small-pox...	Twenty-five rupees.

1		2	3
Section or Rule.	Sub-section or clause.	Subject	Fine which may be imposed.
374	(3)	Prevention of inspection of pcoies of rules and byelaws publicly exhibited ...	Twenty-five rupees.
374	(4)	Destruction, etc., of board exhibiting printed copies of bye-laws and rules ...	Twenty five rupees.
384	(7)	Failure to produce licence on request ...	Five rupees.
388	...	Failure to comply with requisition to attend produce document or give evidence ...	Fifty rupees.
397	(1)	Failure of occupier to comply with requisition to permit owner to comply with provisions of Regulation ...	Twenty-five rupees for each day.
[399	...	Preventing the Commissioner or any person authorised by him from exercising his powers of entry ...	Twenty-five rupees]
429	...	Obstructing or molesting Council, Standing Committee, Mayor etc.	One hundred rupees.
430	...	Removing mark set up for indicating level, etc. ...	One hundred rupees.
431	...	Removing, etc., of notice exhibited by or under orders of the Corporation or Commissioner ...	Twenty-five rupees.
432	...	Unlawful removal of earth, sand or other material from land vested in the Corporation or deposit, of matter or encroachment in or on river, estuary etc.,	Twenty-five rupees.
Schedule III, Rule 17	...	Failure to comply with requisition by auditors to attend to give evidence or produce document ...	Fifty rupees

SCHEDULE VI.

PENALTIES FOR CONTINUING BREACHES.

[*See Section* 375 (2).]

1		2	3
Section or Ru	Sub-section or clause.	Subject.	Daily fine which may be imposed.
172	...	Failure to maintain house-connections in conformity with bye-laws and regulations ...	Five rupees
173	(2)	Failure to comply with requisition to make house-connections ...	Five rupees
180	...	Failure to maintain house-drains, etc., in conformity with bye-laws and regulation ...	Ten rupees.
181	(2)&(3)	Failure to comply with requisition as to house-drainage ...	Ten rupees.
,,	(4)	Occupying or allowing occupation of house without proper drainage ...	Twenty rupees.
186	...	Failure to comply with requisition to maintain troughs and pipes for catching, etc., water from roof or other part of building ...	Ten rupees.
188	...	Failure to comply with requisition to provide latrine or to remove latrine to another site and failure to keep latrines clean and in proper order ...	Ten rupees.
189	...	Failure to provide latrines for premises used by large numbers of people or to keep them clean and in proper order ...	Twenty rupees.
190	...	Failure to comply with requisition to provide latrines for market, cattle stand or cart stand or to keep them clean and in proper order ...	Twenty rupees.
204	(1)&(5)	Allowing rubbish or filth to accumulate on premises for more than twenty-four hours ...	Ten rupees.
211	...	Building within street alignment or building line without permission ...	One hundred rupees.
225	...	Failure to remove permanent encroachment ...	Ten rupees.
226	...	Failure to remove temporary encroachment ...	Five rupees.

1		2	3
Section or Rule.	Sub-section or clause.	Subject.	Daily fine which may be imposed.
229	(1)	Unlawful making of hole or placing of obstruction in street ...	Ten rupees.
230	...	Construction, etc., of building without license where street or foot-way is likely to be obstructed ...	Ten rupees.
[235	(1)	Failure to comply with requisition to round or to splay off building at corners of streets ...	Fifty rupees.]
236	...	Construction of external roof, etc., with inflammable materials ...	Ten rupees.
257	...	Failure to keep external walls of premises in proper repair ...	Ten rupees.
263	...	Failure to comply with requisition to repair, etc., tank or other place dangerous to passers-by or persons living in neighbourhood ...	Ten rupees.
264	...	Failure to comply with notice regarding precautions against fire ...	Ten rupees.
266	...	Failure to comply with requisition to stop dangerous quarrying ...	Ten rupees.
267	...	Failure to comply with requisition to fill up, etc, tank or well or drain off water, etc. ...	Ten rupees.
268	...	Failure to comply with requisition to cleanse or close, etc,. tank, well, etc., or other source of water used for drinking ...	Ten rupees.
272	...	Failure to comply with requisition to enclose, clear or cleanse untenanted premises ...	Ten rupees.
273	...	Failure to comply with requisition to clear or cleanse, etc., building or land in filthy state or overgrown with prickly-pear or other noxious vegetation ...	Ten rupees.
[274	...	Failure to comply with requisition to abate nuisance caused or likely to be caused by dumping etc. of coal, ashes etc. ...	Twenty rupees.]
275	...	Failure to comply with requisition to fence building or land, or trim, prune, or cut hedges and trees or lower an enclosing wall ...	Ten rupees.
276	...	Failure to comply with requisition to lime wash or otherwise cleanse building ...	Ten rupees.

1		2	3
Section or Rule.	Sub-section or clause.	Subject	Daily fine which may be imposed.
277	...	Failure to comply with requisition to execute work or take other action with respect to insanitary buildings ...	Ten rupees in the case of masonry building and five rupees in the case of hut.
[283	(1)	Keeping a lodging house, eating house, tea shops, etc., without or contrary to license ...	One hundred rupees.]
284	(a)	Unlawful keeping of pigs ...	Five rupees.
	(b)	Unlawful keeping of animal so as to be a nuisance or danger ...	Five rupees.
286	...	Use of place as stable, cattle-stand, etc., without licence or contrary to licence ...	Ten rupees.
288	...	Construction or maintenance of stable, cattle-shed, etc., contrary to regulation or subsidiary legislation ...	Ten rupees.
[290	...	Using a public place or the sides of a public street as a public landing place ...	Two hundred rupees.]
[292	...	Keeping open a new private cart-stand without licence or contrary to licence ...	Twenty rupees.]
293	...	Failure to remove carcass of animal ...	Five rupees.
294	...	Use of place for public entertainment without licence ...	Fifty rupees.
295	...	Using a place for any of the purposes specified in schedule IV without licence or contrary to licence ...	Fifty rupees.
296	(1) (2) and, (3)	Unlawful erection of factory, workshop, work places or machinery ...	One hundred rupees.
	(5)	Disobedience of order regarding chimneys..	Fifty rupees
[297	(1)	Disobedience of order regarding abatement of nuisance ...	One hundred rupees.]
	(2)	Disobedience of order regarding prohibiting to working of the factory etc., or the use of particular kind of fuel ...	One hundred rupees.]
[298	...	Failure to comply with requisition to put factory etc., in order to abate over crowding etc. ...	One hundred rupees.]
[299	...	Disobedience of order regarding abatement of nuisance or danger to life etc. ...	One hundred rupees.]

1		2	3
Section or Rule	Sub-section or clause.	Subject.	Daily fine which may be imposed.
306	...	Use of place as slaughter-house without licence or contrary to licence ...	Fifty rupees.
310	...	Carrying on milk trade without licence or contrary to licence ...	Five rupees.
314	(2)	Opening of a private market without licence or contrary to licence ...	One hundred rupees.
315	...	Keeping open private market without licence or contrary to licence ...	One hundred rupees.
318	...	Sale or exposure for sale of animal or article in unlicensed private market ..	Twenty rupees.
321	...	Breach of market Regulations ...	Ten rupees.
323	...	Failure of person in charge of markets to expel persons suffering from leprosy or other infectious or contageous diseases ...	Fifty rupees]
[324	...	Carrying on butcher's, fishmonger's or poulterer's trade without licence, etc., ...	Ten rupees.
	...	Exposing car casses of animals for sale without licence ...	Ten rupees.
[335	(1)	Opening etc. without licence a place for the disposal of the dead ...	One hundred rupees.]
350	...	Failure to comply with requisition to cleanse or disinfect building or article..	Ten rupees.
354	...	Infected person carrying on occupation ...	Fifty rupees.
358	...	Failure to close place of public entertainment ...	One hundred rupees.
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Annexure II.

THE TRAVANCORE MEDICAL REGISTRATION BILL.

(AS REVISED BY THE SELECT COMMITTEE).

The words *italicised* denote the amendments suggested by the Select Committee.

A Bill for the registration of medical practitioners and for the prevention of the practice of the Allopathic system of medicine, *surgery and obstetrics* by persons other than registered practitioners.

Preamble.

Whereas it is expedient to provide for the registration of medical practitioners in Travancore and for the prevention of the practice of the Allopathic system of medicine, *surgery and obstetrics* by persons other than registered practitioners, it is hereby enacted as follows:—

1. This Act may be called "The Travancore Medical Registration Act."

Short Title.

2. The provisions of Sections 4 and 23 shall come into force on such date as Our Government may notify in that behalf in Our Government Gazette. The rest of this Act shall come into force at once.

Commencement.

Definitions.

3. In this Act unless there is something repugnant in the subject or context—

(1) "Council" means the Medical Counil established by this Act;

(2) "Hospitals," "Asylums", "Infirmaries", "Dispensaries", "Lying-in hospitals" *"Sanatorium and nursing homes"* mean institutions, the methods of treatment carried on in which are those which are approved by the Medical Council established by this Act;

(3) "Prescribed" means prescribed by rules or bye-laws made under this Act;

(4) "Registered practitioner" means any person who is registered under the provisions of this Act, and whose registration remains in force;

(5) "Medical practitioner" means any person practising the allopathic system of medicine *or surgery or obstetrics or any of their brnches.*

Privileges of registered practitioners.

4. Notwithstanding anything to the contrary in any enactment, rule, bye-law or any other provision of law—

(1) No certificate, required by law to be given by a medical practitioner, shall be valid unless signed by a registered practitioner.

(2) Except with tha special sanction of Our Government, no one other than a registered practitioner shall be competent to hold any appointment *as medical officer of health or* as physician, surgeon or their medical officer in any hospital, asylum, infirmary, dispensary, lying-in-hospital *sanatorium or nursing home.*

5. (1) A Medical Council shall be established for Travancore and shall consists ten members including a president and a vice-president to be appointed in the following manner:—

Constitution of Medical Council.

(*a*) the president nominated by Our Government;

(*b*) *five* other members nominated by Our Government;

(*c*) two members elected by the registered practitioners who are graduates or licentiates in medicine or surgery of such universities as may notified in that behalf by Our Government in Our Government Gazette;

(*d*) *two members* elected by all other registered practitioners.

(2) The vice-president shall be elected from among the members of the Council.

Qualificasions of members.

6. No person shall be eligible to be a member of the Council unless he is a registered practitioner:

Provided that in case of first appointments made under this Act, the persons electing the members under clauses (*c*) and (*d*) of sub-section (1) of Section 5 and the members appointed shall be persons who are qualified to be registered under Section 13.

Tenure of office of members.

7. The members of the Council shall hold office for a term of three years and shall be eligible for re-appointment.

Cessation of membership.

8. A member of the Council shall be deemed to have vacated his seat ;—

(1) on sending his resignation in writing to the President or Registrar;

(2) on his absence without excuse sufficient in the opinion of the Council, from three consecutive meetings of the Council;

(3) on his absence out of Travancore for six consecutive months;

(4) on removal of his name from the register;

(5) on his being declared an insolvent by any competent court;

(6) on expiry of the term mentioned in Section 7;

(7) *on his being declared by a competent court to be of unsound mind.*

Filling up of vacancies.

9. When the seat of any member becomes vacant, the vacancy shall be filled up by election or nomination, as the case may be in accordance with the provisions of Section 5.

Registrar and other officers.

10. (1) *The Council shall with the previous sanction of the Government appoint* a Registrar who shall act as Secretary of the Council and who shall also act as treasurer, unless the Council shall appoint another person as treasurer. *The Registrar shall be paid such salary and allowance as the Council may determine from time to time.* Every person so appointed shall be removable at the pleasure of the Council.

(2) The Council may also employ such other persons as it may deem necessary for the purposes of this Act.

(3) All persons appointed *or* employed under this Section shall be deemed to be public servants within the meaning of Section 15 of the Travancore Penal Code.

Medical Register.

11. It shall be the duty of the Registrar to keep a register of medical practitioners and from time to time to revise the register and publish it in the prescribed manner. Such register shall be deemed to be a public document and may be proved by a copy published in Our Government Gazette.

Meetings of Council.

12. Except as otherwise provided in this Act, no business shall be transacted at a meeting of the Council unless at least five members are present.

All questions which may come before the Council shall be decided in accordance with the votes of the majority of the members present and voting at the meetings. In the case of an equality of votes the member presiding at the meeting shall have a second or casting vote.

13. Subject to the provisions of Section 14, every person who is possessed of any of the qualifications prescribed in the Schedule shall be entitled to be registered on furnishing to the Registrar, proof of such qualification whether or not such person practises or intends to practise the allopathic system of medicines *or surgery or obstetrics.*

Persons who may be registered.

Provided that Our Government may, after consulting the Council permit the registration of any person who shall furnish proof that he is possessed of a medical degree, diploma or certificate of any university, medical college or school approved by the Council other than those described in the schedule :

Provided further that the Council may refuse to permit the registration of any person who has been convicted of any such offence as implies in the opinion of the Council a defect of character or who, after enquiry at which opportunity has been given to the candidate to be heard in person or by pleader, has been held by the Council to have been guilty of infamous conduct in any professional respect.

14. (1) Every person who applies to be registered under this Act shall pay a registration fee of fifteen rupees.

Registration fee.

(2) Every registered practitioner who applies to the Registrar for registration in respect of any additional qualification obtained subsequent to registration under this Act shall pay a fee of five rupees.

15. An appeal shall lie to the Council against any order of the Registrar under Section 13 or Section 14. The said appeal shall be preferred within three months from the date of the order appealed against.

Appeal against the decision of Registrar.

16. (1) The Council may, if it sees fit and after giving due notice to the person concerned and inquiring into his objections, if any, order that any entry in the register which shall be proved to the satisfaction of the Council to have been fraudulently or incorrectly made or brought about be cancelled or amended

Alteration of register by Council

(2) The Council may direct the removal altogether or for a specified period from the register, of the name of any registered practitioner for the same reasons for which registration may be refused by the Council under Section 13 and the second proviso thereto shall apply to any enquiry under this Section. The Council may also direct that any name so removed shall be restored.

17. (1) An enquiry under Section 13 or Section 16 may be held by a committee consisting of three members of the Council elected for the purpose by the Council. The Council or the committee, as the case may be, may as its discretion hold such enquiry in camera.

Council may appoint a Committee for enquiries

(2) *An appeal shall lie to the Council against any order of the Committee under sub-section* (1).

(3) For the purpose of any *enquiry under sub-section* (1) or of any appeal under Section 15, the Council (or any committee thereof elected as aforesaid) shall have the powers of a Division Peishkar under Act VI of 1073 (Departmental enquiries Act) and all the provisions of that Act shall apply as if the Council (or Committee) were a Division Peishkar.

18. An appeal shall lie to Our Government against every decision of the Council under Section 13 or Section 16 or any order passed in the excercise of the powers granted by Section 17, sub-section (2). Such appeal shall be preferred within three months from the date of the Council's decision or the order as the case may be.

Appeal to Government.

19. No act done in the exercise of any power conferred by this Act on Our Government or the Council or the Registrar shall be questioned in any civil court.

Limiting of jurisdiction of civil courts.

20. It shall be lawful for Our Government by notification in Our Government Gazette to alter the Schedule:

Alteration of Schedule.

Provided that no such alteration shall be made as is not agreed to by the Council.

21. The Council shall have power to call on the governing body or authorities of any university, Medical College or school included or desirous of being included in the Schedule—

Power of Council to call for information, etc.

(a) to furnish such reports, returns or other information as the Council may require to enable it to judge of the efficiency of the instruction given therein in medicine and surgery and obstetrics and

(b) to provide facilities to enable any member of the Council deputed by the Council in this behalf to be present at the examinations held by such university, college or school.

If the said body or authorities refuse to comply with such demand, Our Government may, upon report by the Council, remove such university, college or school, from the Schedule or refuse to include it in the Schedule.

22. If at any time it shall appear to Our Government that the Council has neglected to exercise or has exceeded or abused any power conferred upon it under this Act or has neglected to perform any duty imposed upon it by this Act, Our Government may notify the particulars of such neglect, excess or abuse to the Council and if the Council fails to remedy such neglect, excess or abuse within such time as may be fixed by Our Government in this behalf, Our Government may, for the purpose of remedying such neglect, excess or abuse, cause any of the powers and duties of the Council to be exercised and performed by such agency and for such period as Our Government may think fit.

Default of Council.

23. Any person—

(a) not being a registered practitioner takes or uses any name, title or addition implying a qualification to practise medicine *or surgery or obstetrics* according to the allopathic system; or

Penalty for unauthorised medical practice.

(b) not being a registered practitioner *falsely* pretends to be a registered practitioner, whether any person is actually deceived by such pretence or not;

(c) not being a registered practitioner practises or prososes to practise or publishes his name as practising medicine *or surgery or obstetrics* according to the allopathic system; or

(*d*) who being a registered practioner takes or uses and name, title or addition implying a qualification to practise medicine or surgery according to the allopathic system in respect of which he has not been registered.

shall be punishable on conviction before a Magistrate of the First Class with fine, not exceeding five hundred rupees

24. Our Government may, after previovs publication, make rules for the purpose of carrying of the provisions of this Act.

Power to make rules and bye-laws.

In particular and without prejudice to the generality of the foregoing provision. Our Government may make rules –

i. for the election of members to the Council under Sections 5 & 6 ;

ii. for the election of the vice-president of the Council ;

iii. to regulate the procedure at the enquiry held under Section 13 or Section 16 or Section 17 ;

iv. for the institution, hearing and disposal of appeals under Section 15 or Section 17 or Section 18 ;

v. for the compilation, and publication of the register ;

vi. for the disposal of fees received under this Act.

25. The Council may, with the previous sanction of Our Government, make bye-laws,

i. for convening meetings of the Council ;

ii. for the conduct of business at such meetings ; and

iii. for the appointment, control, pay and allowances of those appointed or employed under Section 10.

THE SCHEDULE.

(1) The degree of Doctor, Bachelor and Licentiate of Medicine and Master, Bachelor and Licentiate of Surgery of the University of Madras, Bompay, Calcutta, Allahabad, Lahore and Mysore.

(2) A diploma or certificate granted by a British Indian Government or the Government of Ceylon to any person trained in a medical College or school declaring him to be qualified to practise Medicine, Surgery and obstetrics-

(3) The Diploma of Fellow member and the Licentiate certificate granted by the State Medical Faculty of Bengal and the College of Physicians and Surgeons of Bombay.

(4) The Diplomas granted by the Hyderabad Medical School or Medical College.

(5) Tho Diploma of licensed Medical Practitioner granted by His Highness the Maharaja of Mysore Medical School.

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THE TRAVANCORE CONTRACT ACT.

(As passed by the Sri Mulam Assembly.)

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A BILL TO DEFINE AND AMEND THE LAW RELATING TO CONTRACTS.

Preamble.

Whereas it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows :—

PRELIMINARY.

Short title.

1. This Act may be called "The Travancore Contract Act."

Extent and commencement.

It extends to the whole of Travancore; and it shall come into force at once.

Saving.

Nothing herein contained shall affect the provisions of any Act not hereby expressly repealed, nor any usage of custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Interpretation clause.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context :—

(*a*) When one person signifies to another, his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal ;

(*b*) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;

(*c*) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee;"

(*d*) When at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise ;

(*e*) Every promise and every set of promises, forming the consideration for each other, is an agreement ;

(*f*) Promises which form the consideration or part of the consideration for each other are called reciprocal promises ;

(*g*) An agreement not enforceable by law is said to be void ;

(*h*) An agreement enforceable by law is a contract ;

(*i*) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract ;

(*j*) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

Communication, acceptance and revocation of proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

Communication when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete—,

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(*a*) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

(*b*) B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete,—

as against A, when the letter is posted;

as against B, when the letter is received by A.

(*c*) A revokes his proposal by telegram. The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptances.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration.

A proposes, by a letter sent by post to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

What agreements are contracts.

10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in Travancore and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(*a*) A patient in a lunatic asylum, who is, at intervals, of sound mind, may contract during those intervals.

(*b*) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Consent" defined.

14. Consent is said to be free when it is not caused by—

"Free consent" defined.

(1) coercion, as defined in Section 15, or

(2) undue influence, as defined in Section 16, or

(3) fraud, as defined in Section 17, or

(4) misrepresentation, as defined in Section 18, or

(5) mistake subject to the provisions of Sections 21, 22 and 23.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the Travancore Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

"Coercion" defined.

Explanation.—It is immaterial whether the Travancore Penal Code is or is not in force in the place where the coercion is employed.

Illustration.

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Travancore Penal Code.

A afterwards sues B for breach of contract at Trivandrum.

A has employed coercion, although his act is not an offence by the law of England, and although Section 509 of the Travancore Penal Code was not in force at the time when or place where the act was done.

16. (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

"Undue influence" defined.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(*a*) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

(*b*) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

(4) Notwithstanding anything contained in Sub-Section (3) where there is a question as to the good faith of a transaction between parties one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations.

(*a*) A having advanced money to his son B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(*c*) A, being in debt to B, the money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

"Fraud" defined.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

(1) the suggestion as a fact, of that which is not true by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

(*a*) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(*b*) B is A's daughter and has just come of age. Here the relation between the parties would make it A's duty to tell B if the horse is unsound.

(*c*) B says to A—"If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

(*d*) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) Causing however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability of agreements without free consent.

19. When consent to an agreement is caused by coercion, fraud and misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of Section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(*b*) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(*c*) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contrat or may insist on its being carried out and the mortgage-debt redeemed.

(*d*) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A

Through A's ignorance B is enabled to buy the estate at an undervalue. The contract is voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

20. When consent to an agreement is caused by undue influence the agreement is a contract voidable at the option of the party whose consent was so caused.

Power to set aside contract induced by undue influence.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(a) A's son has forged B's name to a promissory note: B, under threat of prosecuting A's son obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender advances Rs. 100 to B, an agriculturist, and, by undue influence induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month The Court may set the bond aside ordering B to repay the Rs. 100 with such interest as may seem just.

21. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Agreement void where both parties are under mistake as to matter of fact.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Travancore. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

22. A contract is not voidable because it was caused by a mistake as to any law in force in Travancore; but a mistake as to a law not in force in Travancore has the same effect as a mistake of fact.

Effect of mistakes as to law.

Illustration.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Travancore Law of Limitation; the contract is not voidable.

23. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Contract caused by mistake of one party as to matter of fact.

24. The consideration or object of an agreement is lawful, unless—

What considerations and objects are lawful and what not.

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(*a*) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(*b*) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.

(*c*) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise and these are lawful considerations.

(*d*) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e*) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f*) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(*g*) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal The agreement between A and B is void, as it implies a fraud by concealment by A on his principal.

(*h*) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(*i*) A's estate is sold for arrears of revenue under the provisions of an Act by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's mukhtiar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Travancore Penal Code.

VOID AGREEMENTS.

Agreements void if considerations and objects unlawful in part.

25. If any part of a single consideration for one or more objects, or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

Agreement without consideration void unless it is in writing and registered

26. An agreement made without consideration is void, unless—

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

Or is a promise to compensate for something done.

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do; or unless.

Or is a promise to pay a debt, barred by limitation law.

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1. Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2. An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(b) A, for natural love and affection, promises to give his son, B Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.

(c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract,

(*d*) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(*e*) A owes B Rs. 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(*f*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void.

27. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement in restraint of trade void.

28. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Saving of agreement not to carry on business of which goodwill is sold.

Exception.—One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

Agreements in restraint of legal proceedings void.

29. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinar tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of contract to refer to arbitration dispute that may arise.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Saving of contract to refer questions that have already arisen.

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Agreements void for uncertainty.

30. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(*a*) A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons or oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in cocoanut oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut oil.

(d) A agrees to sell to B "all the grain in my granary at Trivandrum". There is no uncertainty here to make the agreement void.

(e) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C". As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

Agreements by way of wager void.

31. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse racing.

This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race.

Section 293 of the Travancore Penal Code not affected.

Nothing in this section shall be deemed to legalize any transaction connected with horse racing to which the provisions of Section 293 of the Travancore Penal Code apply.

CHAPTER III.

Of Contingent Contracts.

"Contingent contract" defined.

32. A "contingent contract" is a contract to do or not to do something, if some event collateral to such contract, does or does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening.

33. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible such contracts become void.

Illustrations.

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(*b*) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(*c*) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

34. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Enforcement of contracts contingent on an event not happening.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

35. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

When event on which contracts is contingent to be deemed impossible if it is the future conduct of a living person.

Illustration.

A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossile, although it is possible that D may die and that C may afterwards marry B.

36. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts become void which are contingent on happening of specified event within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Illustrations.

(*a*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(*b*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

37. Contingent agreements to do or not to do anything, if an impossible event happens, are void whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Agreement contingent on impossible events void.

Illustrations.

(*a*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b*) A agrees to pay B 1,000 rupees if B will marry A's daughter C C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

CONTRACTS WHICH MUST BE PERFORMED.

Obligation of parties to contracts.

38. The parties to a contract must either perform, or offer to perfom their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations.

(*a*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000. A dies beforethat day. A's representatives are bound to deliver the goods to B and B is bound to pay the Rs. 1,000 to A's representatives

(*b*) A promises to paint a picture for B by certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance.

39. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. Every such offer must fulfil the following conditions:—

(1) It must be unconditional;

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;

(3) if the offer is an offer to deliver anything to the promisee the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustrations.

A contracts to deliver to B at his warehouse, on the 1st March 1940, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

40. When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance.

Effect of refusal of party to perform promise wholly.

Illustrations.

(*a*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(*b*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed

41. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Person by whom promise is to be performed

Illustrations.

(*a*) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(*b*) A promises to paint a picture for B. A must perform this promise personally.

42. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Effect of accepting performance from third person.

43. When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Devolution of joint liabilities.

44. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Any one of joint promisors may be compelled to perform.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Each promisor may compel contribution.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisers must bear the loss arising from such default in equal shares.

Sharing of loss by default in contribution.

Explanation. Nothing in this section shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a*) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b*) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate and 1,250 rupees from B.

(*c*) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(*d*) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are enitled to recover it from C.

45. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Effect of release of one joint promisor.

46. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Evolution of joint rights

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C, with the representatives of B and C jointly.

Time and place for performance.

47. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Time for performance of promise where no application is to be made and no time is specified.

Explanation. The question "what is reasonable time" is, in each particular case, a question of fact.

48. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Time and place for performance of promise where time is specified and no application to be made.

Illustration.

A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

49. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Application for performance on certain day to be at proper time and place.

Explanation. The question "what is a proper time and place" is, in each particular case, a question of fact.

50. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place

Place for performance of promise where no application to be made and no place fixed for performance.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it and must deliver it to him at such place.

51. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Performance in manner or at time prescribed or sanctioned by promisee.

Illustrations.

(*a*) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(*b*) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c) A owes B 2,000 rupees. B accepts some of A's goods in deduction of the debt. The delivery of the goods operates as a part payment.

(d) A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform.

52. When a contract consists of reciprocal promises to be simultaneously performed no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise

Illustrations.

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

53. Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until he security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Liability of party preventing event on which contract is to take effect.

54. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.

55. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any which such other party may sustain by the non-performance of the contract.

Illustrations.

(*a*) A hires B's ship to take in and convey from Travancore to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise and must make compensation to B for the loss which he sustains by the non-performance of the contract.

(*b*) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(*c*) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month and B engages to pay for the merchandise within a week from the date of the contract. B does not pay with in the week. A's promise to deliver need not be performed, and B must make compensation.

(*d*) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time in contract in which time is essential.

56. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.

If it was not the intention of the parties that time should be of the essence of the conract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Effect of acceptance of performance at time other than that agreed upon.

57. An agreement to do an act impossible in itself is void.

Agreement to do impossible act.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Contract to do act afterwards becoming impossible or unlawful.

Where one person has promised to do something which he knew, or with reasonable diligence might have known and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Compensation for loss through non-performance of act known to be impossible or unlawful

Illustrations.

(*a*) A agrees with B to discover treasure by magic. The agreement is void.

(*b*) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(*c*) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(*d*) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e*) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

58. Where persons reciprocally promise, firstly, to do certain things which are legal, and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Reciprocal promise to do things legal and also other things illegal.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement

59. In the case of an alternative promise, one branch of which is legal and the other illegal the legal branch alone can be enforced.

Alternative promise, one branch being illegal.

Illustration.

A and B agree that A shall pay B 1,000 rupees for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice and void agreement as to the opium.

Appropriation of payments.

60. Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application of payment where debt to be discharged is indicated.

Illustrations.

(*a*) A owes B, among other debts, 1,000 rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b*) A owes to B among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

61. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where debt to be discharged is not indicated.

62. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Application of payment where neither party appropriates.

Contracts which need not be performed.

63. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Effect of enovation, rescission and alteration of contract.

Illustrations.

(*a*) A owes money to B under a contract. It is agreed between A, B, and C that B shall thenceforth accept C as his debtor instead of A. The old debt of A to B is at an end and new debt from C to B has been contracted.

(*b*) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(*c*) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise.

64. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(*a*) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(*b*) A owes B 5,000 rupees. A pays to B and B accepts, in satisfaction of the whole debt 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c*) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(*d*) A owes B under a contract, a sum of money the amount of which has not been ascertained. A without ascertaining the amount gives to B, and B, in satisfaction thereof, accepts the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(*e*) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

Consequences of rescission of voidable contract.

65. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Obligation of person who has received advantage under void agreement or contract that becomes void.

66. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations.

(*a*) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b*) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the 1st of May. He is bound to pay A for them.

(*c*) A, singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(*d*) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract.

67. The Rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

68. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house. B neglects or refuses to point out to A the places in which his house requires repair. A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessaries supplied to person incapable of contracting, or on his account.

69. If a person, incapable of entering into a contract, or any one whom he is legally bound to support is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(*a*) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(*b*) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

70. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Reimbursement of person paying money due by another in payment of which he is interested.

Illustration.

B holds land, on a lease granted by A. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

71. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Obligation of person enjoying benefit of non-gratuitous act.

Illustrations.

(*a*) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(*b*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

72. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Responsibility of finder of goods

73. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

Illustrations.

(*a*) A and B jointly owe 100 rupees to C. A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b*) A railway company refuses to deliver certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

Compensation for loss of damage caused by breach of contract.

74. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(*a*) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b*) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Travancore, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(*c*) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(*d*) A contracts to buy B's ship for 60,000 rupees, but breaks his promise, A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(*e*) A, the owner of a boat contracts with B to take a cargo of jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed,

whereby the arrival of the cargo a Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*f*) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(*g*) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freights rise, and on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(*h*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(*i*) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j*) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in conseqence, rescinds the contract. C must pay to A 20,000 rupees, being the profit which A would have made by the performance of his contract with B.

(*k*) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not delievr the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*l*) A, a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C, to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding the house, for the rent lost, and for the compensation made to C.

(*m*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(*n*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*o*) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(*p*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mills.

(*q*) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r*) A, a ship-owner, contracts with B to convey him from Travancore to Sydney in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Travancore for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put by his detention in Travancore, and the excess, if any, of the passage money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

75. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Compensation for breach of contract where penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(a) A contracts with B to pay B. Rs. 1000, if he fails to pay B. Rs. 500 on a given day. A fails to pay B. Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1000 as the Court considers reasonable.

(b) A contracts with B that, if A practises as a surgeon within Travancore, he will pay B. Rs. 5000. A practises as a surgeon in Travancore. B is entitled to such compensation, not exceeding Rs. 5000, as the Court considers reasonable.

(c) A gives a recognisance binding him in a penalty of Rs. 500, to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d) A gives B a bond for the repayment of Rs. 1000 with interest at 12 per cent. at the end of six months with a stipulation that in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a money-lender undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of Rs. 1000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

Party rightfully rescinding contract entitled to compensation.

76. A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration.

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth, night A wilfully absents herself from the theatre, and B, in consequence rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII.

Of Indemnity and Guarantee.

"Contract of Indemnity" defined.

77. A contract by which one party promises to save the other from loss caused to him by the conduct of the promiser himself, or by the conduct of any other person, is called a "contract of indemnity".

Illustration.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights of indemnity holder when sued.

78. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promiser, and acted as it would have been prudent for him to act in the absense of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promiser and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promiser authorised him to compromise the suit.

"Contract of guarantee", "surety", "principal debtor" and "creditor."

79. A "contract of guarantee" is a contract to perform the promise or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor" and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

80. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Consideration for guarantee.

Illustrations.

(a) B requests A to sell and deliver to him goods on credit A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C, afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

81. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Surety's liability.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable not only other amount of the bill but also for any interest and charges which may have become due on it.

82. A guarantee which extends to a series of transactions is called a "continuing guarantee".

"Continuing guarantee."

Illustrations.

(a) A, in consideration that B will employ C in collecting the rents of B's Edavaga promises B to be responsible, to the amount of 5000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea-dealer, to the amount of Rs. 100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of Rs. 100, and C pays B for it. Afterwards B supplies C with tea to the value of Rs. 200 C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of Rs. 100.

(c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee and accordingly he is not liable for the price of the four sacks

83. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Revocation of continuing guarantee.

Illustrations.

(a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payments of all such bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discounting. But A is liable to B for the 2,000 rupees, on default of C.

(b) A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the Bill at maturity. A is liable upon his guarantee.

Revocation of continuing guarantee by surety's death.

84. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.

85. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Discharge of surety by variance in terms of contract.

86. Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on over-drafts. B allows a customer to overdraw, and the Bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his liability, as the contract has been varied in as much as C might sue B for the money before the 1st March.

Discharge of surety by release or discharge of principal debtor

87. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(*a*) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(*b*) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(*c*) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.

88. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Surety not discharged when agreement made with third person to give time to principal debtor.

89. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

90. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

91. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.

Release of one co-surety does not discharge others.

92. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditors's act or omission impairing surety's eventual remedy.

Illustrations.

(*a*) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(*b*) C lends money to B on the security of a joint and several promissory note made in C's favour by B and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realised. A is discharged from liability on the note.

(*c*) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

93. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Rights of surety on payment or performance.

94 A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into whether the surety knows of the existence of such security or not, and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Surety's right to benefit of creditor's securities.

Illustrations.

(*a*) C advances to B, his tenant 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(*b*) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree and then, without the knowlege of A, withdraws the execution. A is discharged.

(*c*) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

95 Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by misrepresentation invalid.

96. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Guarantee obtained by concealment invalid.

Illustrations.

(*a*) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(*b*) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

97. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Guarantee on contract that creditor shall not act on it until co-surety joins.

98. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Implied promise to indemnify surety.

Illustrations.

(*a*) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(*b*) C lends B a sum of money, and A, at the request of B accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real groud for defending the action.

(*c*) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

99. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

(*a*) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(*b*) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one quarter, B to the extent of one quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, and B 250 rupees and C 500 rupees.

Liability of co-sureties bound in different sums.

100. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(*a*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(*b*) A, B and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(*c*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees. C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER VIII.

OF BAILMENT.

101. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

"Bailment," "bailor," and "bailee", defined.

Explanation. If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

102. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.

Delivery to bailee how made.

103. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

Bailor's duty to disclose faults in goods bailed.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(*a*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(*b*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

104. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Care to be taken by bailee.

105. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 104.

Bailee when not liable for loss, etc., of thing bailed.

106. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Termination of bailment by bailee's act inconsistent with condition.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage This is, at the option of A, a termination of the bailment.

107. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorised use of goods.

Illustrations.

(*a*) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured B is liable to make compensation to A for the injury done to the horse.

(*b*) A hires a horse at Trivandrum from B expressly to march to Quilon. A rides with due care, but marches to Nagercoil instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

108. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent, of his goods with bailees.

109. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Effect of mixture, without bailor's consent, when the goods can be separated

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B without A's consent mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

110. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Effect of mixture without bailor's consent, when the goods cannot be separated.

Illustration.

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

111. Where, by the conditions of the blaiment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Repayment by bailor of necessary expenses.

112. The lender of a thing for use may at any time require its return, if the loan was gratuitous even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Restoration of goods lent gratuitously.

113. It is the duty of the bailee to return, or deliver according to the bailor's direction, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Return of goods bailed on expiration of time or accomplishment of purpose.

114. If, by the default of the bailee, the goods are not returned, delivered or rendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Bailee's responsibility when goods are not duly returned.

115. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Termination of gratuitous bailment by death.

116. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Bailor entitled to increase or profit from goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

117. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them.

Bailor's responsibility to bailee.

118. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailment by several joint owners.

119 If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Bailee not responsible on re-delivery to bailor without title.

120. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of third person claiming goods bailed.

121. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Right of finder of goods; may sue for specific reward offered.

122. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it.—

When finder of thing commonly on sale may sell it.

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

123. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Bailee's particular lien.

Illustrations.

(*a*) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months credit for the price. B is not entitled to retain the coat until he is paid.

124. Bankers, factors, wharfingers, policy-brokers, Advocates and Vakils may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

General lien of bankers, factors, wharfingers and policy-brokers.

Bailments of Pledges.

125. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor." The bailee is called the "pawnee."

"Pledge", "pawnor" and "pawnee" defined.

126. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Pawnee's right of retainer.

127. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee not to retain for debt or promise other than that for which goods pledged Presumption in case of subsequent advances.

128. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right as to extraordinary expenses incurred.

129. If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

Pawnee's right where pawnor makes default.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

130. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Defaulting pawnor's right to redeem.

131. Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.

Pledge by mercantile agent.

Explanation. In this Section, the expressions "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Travancore Sale of Goods Act.

132. When the pawnor has obtained possession of the goods pledged by him under a contract voidable under Section 19 or Section 20, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Pledge by person in possession under voidable contract.

133. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-Doers.

Suit by bailor or bailee against wrong-doer.

184. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

135. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER IX.

AGENCY.

Appointment and Authority of Agents.

"Agent", and "principal" defined.

136. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal."

Who may employ agent.

137. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent.

138. As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his Principal according to the provisions in that behalf herein contained.

Consideration not necessary.

139. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

140. The authority of an agent may be expressed or implied.

Definitions of express and implied authority.

141. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Quilon living himself in Trivandrum and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority.

142. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(*a*) A is employed by B, residing in London, to recover at Trivandrum a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purposes of carrying on the business.

Agent's authority in an emergency.

143. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Illustrations.

(*a*) An agent for sale may have goods repaired if it be necessary.

(*b*) A consigns provisions to B at Alleppey with directions to send them immediately to C at Trivandrum. B may sell the provisions at Alleppey if they will not bear the journey to Trivandrum without spoiling.

Sub-Agents.

When agent cannot delegate.

144. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub agent may, or, from the nature of the agency, a sub-agent must be employed.

"Sub-agent" defined.

145. A "Sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representation of principal by Sub-agent properly appointed.

146. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agents.

The agent is responsible to the principal for the acts of the sub-agent.

Sub agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Agent's responsibility for sub agent appointed without authority.

147. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

148. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Relation between principal and person duly appointed by agent to act in business of agency.

Illustrations.

(*a*) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(*b*) A authorises B, a merchant in Alleppey, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co., for the recovery of the money. D is not a sub-agent, but is solicitor for A.

149. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Agent's duty in naming such person.

Illustrations.

(*a*) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(*b*) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

150. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Right of person as to acts done for him without his authority; effect of ratification.

151. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Ratification may be expressed or implied.

Illustrations.

(*a*) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(*b*) A, without B's authority, lends B's money to C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.

152. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Knowledge requisite for valid ratification

153. A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Effect of ratifying unauthorised act forming part of a transaction.

154. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Ratification of unauthorised act cannot injure third person.

Illustrations.

(*a*) A, not being authorised thereto by B, demands, on behalf of B, the delivery of, a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(*b*) A holds a lease from B, terminable on three months notice. C, an unauthorised person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

REVOCATION OF AUTHORITY.

155. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Termination of agency.

156. Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Termination of agency where agent has an interest in subject matter.

Illustrations.

(*a*) A gives authority to B to sell A's land, and to pay himself out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

157. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agent's authority

Revocation where authority has been partly exercised.

158. The principal cannot revoke authority given to his agent after the authority has been partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(a) A authorises B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorises B to buy 1000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

Compensation for revocation by principal, or renunciation by agent.

159. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of agency without sufficient cause.

Notice of revocation or renunciation.

160. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied.

161. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent and as to third persons.

162. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(a) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) A, at Trivandrum by letter directs B to sell for him some cotton lying in a warehouse in Quilon, and afterwards by letter, revokes his authority to sell, and directs B to send the cotton to Trivandrum. B after receiving the second letter, enters into a contract with C, who knows

of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

163. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interest entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

164. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Termination to sub-agent's authority.

Agent's duty to principal.

165. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Agent's duty in conducting principal's business.

Illustrations.

(a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

166. An agent is bound to conduct the business of the Agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Skill and diligence required from agent.

Illustrations.

(a) A, a merchant in Trivandrum has an agent, B in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and

interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as *e. g.*, by variation of rate of exchange—but not further.

(*b*) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(*c*) A, an insurance-broker, employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(*d*) A, a merchant in England, directs B, his agent at Trivandrum who accepts the agency, to send him 100 bales of cotton by a certain ship B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

167. An agent is bound to render proper accounts to his principal on demand.

Agents duty to communicate with principal.

168. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Right of principal when agent deals, on his own account, in business of agency without principal's consent.

169. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations.

(*a*) A directs B to sell A's estate. B buys the estate for himself in the name of C A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b*) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

170. If an agent, without the knowledge of his principal, deals in the business of the agency, on his own account instead of on account of his principal, the pincipal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A that it cannot be bought and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

171. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

172. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal.

173. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

174. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

Illustrations.

(*a*) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

175. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Agent's lien on principal's property.

Principal's Duty to Agent.

176. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Agent to be indemnified against consequence of lawful acts.

Illustrations.

(*a*) B, at Kottayam under instructions from A of Trivandrum contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorises him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(*b*) B, a broker at Kottayam by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

177. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

Illustrations.

(*a*) A, a decree-holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(*b*) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

178. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Non-liability of employer of agent to do a criminal act.

Illustrations.

(*a*) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(*b*) B, the proprietor of a newspaper, publishes at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

179. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Compensation to his agent for injury caused by principal's neglect.

Illustration.

A employs B as a brick-layer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third persons.

180. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the Principal in person.

Enforcement and consequences of agent's contracts.

Illustrations.

(*a*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim for A the price of the goods, and A cannot in a suit by the principal set off against that claim a debt due to himself from B.

(*b*) A being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

181. When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority can be separated from the part which is beyond his authority, so much only of what he does as is within his autority, is binding as between him and his principal.

Principal how far bound when agent exceeds authority.

Illustration.

A, being owner of a ship and cargo, authorises B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4 000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

182. Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

Principal not bound when excess of agent's authority is not separable.

Illustration.

A authorises B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

183. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as iit had been given to or obtained by the principal.

Consequences of notice given to agent.

Illustrations.

(*a*) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b*) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

184. In the absence of any contract to that effect, an agent, cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.

Such a contract shall be presumed to exist in the following cases :—

(1) Where the contract is made by an agent for the sale or purchas of goods for a merchant resident abroad :

(2) Where the agent does not disclose the name of his principal:

(3) Where the principal, though disclosed, cannot be sued.

Rights of parties to a contract made by agent not disclosed.

185. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

186. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of person dealing with agent personally liable.

187. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both for the price of the cotton.

188. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

189. A person untruly representing himself to be the authorised agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

190. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent not entitled to performance.

191. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, he principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorised acts were authorised.

Illustrations.

(*a*) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(*b*) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

192. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Effect, on agreement, of misrepresentation or fraud by agent.

Illustrations.

(*a*) A being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorised by B to make. The contract is voidable, as between B and C, at the option of C.

(*b*) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

Savings.

193. Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—

(a) any right, title, interest, obligation or liability already acquired accrued or incurred before the commencement of this Act, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, and

(*c*) anything done or suffered before the commencement of this Act,

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THE TRAVANCORE SALE OF GOODS BILL

(As passed by the Sri-Mulam Assembly.)

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THE TRAVANCORE SALE OF GOODS BILL.

(*As passed by the Sri Mulam Assembly.*)

AN ACT TO DEFINE THE LAW RELATING TO THE SALE OF GOODS.

Whereas it is expedient to define the law relating to the sale of goods; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Travancore Sale of Goods Act.
Short title, extent and commencement.

(2) It extends to the whole of Travancore.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context,—
Definitions.

(1) "buyer" means a person who buys or agrees to buy goods;

(2) "delivery" means voluntary transfer of possession from one person to another;

(3) goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

(4) "document of title to goods" includes a bill of lading, dock-warrant, ware-housekeeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

(5) "fault" means wrongful act or default;

(6) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(7) "goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

(8) a person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;

(9) "mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods.

(10) "price" means the money consideration for a sale of goods;

(11) "property" means the general property in goods, and not merely a special property;

(12) "quality of goods" includes their state or condition;

(13) "seller" means a person who sells or agrees to sell goods;

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made; and

(15) expressions used but not defined in this Act and defined in the Travancore Contract Act have the meanings assigned to them in that Act.

Application of provisions of the Travancore Contract Act.

3. The provisions of the Travancore Contract Act save in so far as they are inconsistent with the express provisions of this Act shall apply to contracts for the sale of goods.

CHAPTER II.

FORMATION OF THE CONTRACT.

Contract of sale.

Sale and agreement to sell.

4. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Formalities of the Contract.

Contract of sale how made

5. (1) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.

(2) Subject to the provisions of any law for the time being in force a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Subject-matter of Contract.

6. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods.

Existing or future goods.

(2) There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.

7. Where there is a contract for the sale of specific goods, the contract is void if the goods without the knowledge of the seller have at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract.

Goods perishing before making of contract.

8. Where there is an agreement to sell specific goods, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided.

Goods perishing before sale but after agreement to sell.

The Price.

9. (1) The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

Ascertainment of price.

(2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

10. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided:

Agreement to sell at valuation.

Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation, by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.

Conditions and Warranties.

11. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

Stipulation as to time.

12. (1) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.

Condition and warranty.

(2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

(3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

(4) Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. The stipulation may be a condition though called a warranty in the contract.

13. (1) Where a contract of sale is subject to any condition to be fulfilled by the seller the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated.

When condition to be treated as warranty.

(2) Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

(3) Nothing in this section shall affect the case of any condition or warranty the fulfilment of which is excused by law by reason of impossibility or otherwise.

14. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is

Implied undertaking as to title, etc.

(*a*) an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass;

(*b*) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;

(*c*) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.

15. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Sale by description.

16. Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—

Implied conditions as to quality or fitness.

(1) Where the buyer expressly, or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.

Sale by sample

17. (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

(2) In the case of a contract for sale by sample there is an implied condition—

(a) that the bulk shall correspond with the sample in quality;

(b) that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;

(c) that the goods shall be free from any defect, rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

CHAPTER III.

EFFECTS OF THE CONTRACT.

Transfer of property as between seller and buyer.

Goods must be ascertained.

18. Where there is a contract for the sale of unascertained goods, no property in the goods is tranferred to the buyer unless and until the goods are ascertained.

Property passes when intended to pass.

19. (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

20. Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price at the time of delivery of the goods, or both, is postponed.

Specific goods in a deliverable state

21. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such things is done and the buyer has notice thereof.

Specific goods to be put into a deliverable state.

22. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer hasnotice thereof.

Specific goods in a deliverable state when the seller has to do anything thereto in order to ascertain price.

23. (1) Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller, with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

Sale of unascertained goods and appropriation.

(2) Where, in pursuance of the contract the seller delivers the goods to the buyer to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have un-conditionally appropriated the goods to the contract.

Delivery to carrier.

24. When goods are delivered to the buyer on approval or "on sale or return", or other similar terms, the property therein passes to the buyer—

Goods sent on approval or "on sale or return."

(*a*) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction ;

(*b*) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice or rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

25. (1) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

Reservation of right of disposal.

(2) Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

Risk *prima facie* passes with property.

26. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not :

Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault :

Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

Transfer of Title.

Sale by person not the owner.

27. Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority of or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell :

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same ; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by one of joint owners.

28. If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by person in possession under voidable contract.

29. When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or Section 20 of the Travancore Contract Act, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods provided he buys them in good faith and without notice of the seller's defect of title.

Seller or buyer in possession after sale.

30. (1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof

to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

CHAPTER IV.

PERFORMANCE OF THE CONTRACT.

Duties of seller and buyer.

31. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

Payment and delivery are concurrent conditions.

32. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Delivery.

33. Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf.

Effect of part delivery.

34. A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Buyer to apply for delivery.

35. Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.

Rules as to delivery.

36. (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied between the parties. Apart from any such contract, goods sold or to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

37. (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

Delivery of wrong quantity.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

38. (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.

Instalment deliveries.

(2) Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes no delivery or defective delivery in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated.

39. (1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer or delivery of the goods to a wharfinger for safe custody, is *prima facie* deemed to be a delivery of the goods to the buyer.

Delivery to carrier or wharfinger.

(2) Unless otherwise authorised by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits so to do, and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger,

the buyer may decline to treat the delivery to the carrier or wharfinger as a delivery to himself or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

Risk where goods are delivered at a distant place.

40. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer shall, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

Buyer's right of examining the goods.

41. (1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

Acceptance.

42. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Buyer not bound to return rejected goods.

43. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

Liability of buyer for neglecting or refusing delivery of goods

44. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods:

Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

CHAPTER V.

RIGHTS OF UNPAID SELLER AGAINST THE GOOD

"Unpaid seller" defined.

45. (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

(a) When the whole of the price has not been paid or tendered;

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment and the condition on

which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this Chapter, the term "seller" includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.

Unpaid seller's rights.

46. (1) Subject to the provisions of this Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

(a) a lien on the goods for the price while he is in possession of them;

(b) in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;

(c) a right of resale as limited by this Act.

(2) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

Unpaid seller's lien.

Seller's lien.

47. (1) Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit, but the term of credit has expired;

(c) Where the buyer becomes insolvent.

(2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Part delivery.

48. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

Termination of lien

49. (1) The unpaid seller of goods loses his lien thereon—

(a) when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;

(b) when the buyer or his agent lawfully obtains possession of the goods;

(c) by waiver thereof.

(2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods.

Stoppage in transit.

50. Subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.

Right of stoppage in transit.

51. (1) Goods are deemed to be in the course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee.

Duration of transit.

(2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.

(3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at an end and it is immaterial that a further destination for the goods may have been indicated by the buyer.

(4) If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

(5) When goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the master as a carrier or as agent of the buyer.

(6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end.

(7) Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods.

52. (1) The unpaid seller may exercise his right of stoppage in transit either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

How stoppage in transit is effected.

(2) When notice of stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods, he shall re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery shall be borne by the seller.

Transfer by buyer and seller.

53. (1) Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:

Effect of sub-sale or pledge by buyer.

Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee.

(2) Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

54. (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage in transit.

Sale not generally rescinded by lien or stoppage in transit.

(2) Where the goods are of a perishable nature, or where the unpaid seller who has exercised his right of lien or stoppage in transit gives notice to the buyer of his intention to re-sell, the unpaid seller may, if the buyer does not within a reasonable time pay or tender the price, re-sell the goods within a reasonable time and recover from the original buyer damages for any loss occasioned by his breach of contract, but the buyer shall not be entitled to any profit which may occur on the re-sale. If such notice is not given, the unpaid seller shall not be entitled to recover such damages and the buyer shall be entitled to the profit, if any, on the re-sale.

(3) Where an unpaid seller who has exercised his right of lien or stoppage in transit re-sells the goods, the buyer acquires a good title thereto as against the original buyer, notwithstanding that no notice of the re-sale has been given to the original buyer.

(4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and, on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim which the seller may have for damages.

CHAPTER VI.

SUITS FOR BREACH OF THE CONTRACT.

55. (1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

Suit for price.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.

56. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Damages for non-acceptance.

57. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

Damages for non-delivery.

58. Subject to the provisions of Chapter II of the Travancore Specific Relief Act, in any suit for breach of contract to deliver specific or ascertained goods, the Court may, if it thinks fit, on the application of the plaintiff, by its decree direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The decree may be unconditional, or upon such terms and conditions as to damages, payment of the price or otherwise as the Court may deem just, and the application of the plaintiff may be made at any time before the decree.

Specific performance.

59. (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—

Remedy for breach of warranty.

(a) set up against the seller the breach of warranty in diminution or extinction of the price; or

(b) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

60. Where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

Repudiation of contract before due date.

61. (1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

Interest by way of damages and special damages.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price—

(a) to the seller in a suit by him for the amount of the price—from the date of the tender of the goods or from the date on which the price was payable;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller—from the date on which the payment was made.

CHAPTER VII.

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62. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

Exclusion of implied terms and conditions.

63. Where in this Act any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

Reasonable time a question of fact.

64. In the case of a sale by auction—

Auction sale

(1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;

(3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction;

(4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;

(5) the sale may be notified to be subject to a reserved or upset price;

(6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

65. (1) Nothing in this Act shall affect or be deemed to affect—

Savings.

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act; or

(*b*) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability; or

(*c*) anything done or suffered before the commencement of this Act; or

(*d*) any rule of law not inconsistent with this Act.

(2) The rules of insolvency relating to contracts for the sale of goods shall continue to apply thereto, notwithstanding anything contained in this Act.

(3) The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge or other security.

Annexure No. V.

THE TRAVANCORE PARTNERSHIP BILL.

(*As passed by the Sri Mulam Assembly.*)

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THE TRAVANCORE PARTNERSHIP BILL.

AN ACT TO DEFINE AND AMEND
THE LAW RELATING TO
PARTNERSHIP.

Preamble.

Whereas it is expedient to define and amend the law relating to partnership; it is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Travancore Partnership Act.

(2) It extends to the whole of Travancore.

(3) It shall come into force at once, except Section 68 which shall come into force on the date of expiry of one year from the date on which the other provisions of this Act come into force.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context :—

(*a*) an "act of firm" means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm ;

(*b*) "business" includes every trade, occupation and profession;

(*c*) "prescribed" means prescribed by rules made under this Act;

(*d*) "third party," used in relation to a firm or to a partner therein, means any person who is not a partner in the firm ; and

(*e*) expressions used but not defined in this Act and defined in the Travancore Contract Act, shall have the meanings assigned to them in that Act.

Application of the general law of contracts.

3. The provisions of the Travancore Contract Act, save in so far as they are inconsistent with the express provisions of this Act, shall apply to firms.

CHAPTER II.

THE NATURE OF PARTNERSHIP.

Definition of "partnership" "Partner" "Firm" and "Firm name."

4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm," and the name under which their business is carried on is called the "firm name."

5. The relation of partnership arises from contract and not from status;

Partnership not created by status.

and, in particular, the members of a Hindu undivided family carrying on a family business as such are not partners in such business.

6. In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

Mode of determining existence of partnership.

Explanation — 1. The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.

Explanation — 2. The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business; and in particular the receipt of such share or payment —

(*a*) by a lender of money to persons engaged or about to engage in any business,

(*b*) by a servant or agent as remuneration,

(*c*) by the widow or child of a deceased partner, as annuity, or

(*d*) by a previous owner or part-owner of the business, as consideration for the sale of the goodwill or share thereof, does not itself make the receiver a partner with the persons carrying on the business.

7. Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will"

Partnership at will.

8. A person may become a partner with another person in particular adventures or undertakings.

Particular Partnership.

CHAPTER III.

RELATIONS OF PARTNERS TO ONE ANOTHER.

9. Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.

General duties of partners.

10. Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

Duty to indemnify for loss caused by fraud.

11. (1) Subject to the provisions of this Act, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be express or may be implied by a course of dealing.

Determination of rights and duties of partners by contract between the partners.

Such contract may be varied by consent of all the partners, and such consent may be express or may be implied by a course of dealing.

(2) Notwithstanding anything contained in Section 28 of the Travancore Contract Act, such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

Agreements in restraint of trade.

The conduct of the business.

12. Subject to contract between the partners :—

(*a*) every partner has a right to take part in the conduct of the business ;

(*b*) every partner is bound to attend diligently to his duties in the conduct of the business ;

(c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners ; and

(*d*) every partner has a right to have access to and to inspect and copy any of the books of the firm.

Mutual rights and liabilities.

13. Subject to contract between the partners,—

(*a*) a partner is not entitled to receive remuneration for taking part in the conduct of the business ;

(*b*) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm ;

(c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits ;

(*d*) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent per annum ;

(*e*) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him :—

(i) in the ordinary and proper conduct of the business, and

(ii) in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances ; and

(*f*) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

14. Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purpose and in the course of the business of the firm, and includes also the goodwill of the business.

The property of the firm.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.

15. Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.

Application of the property of the firm.

16. Subject to contract between the Partners,—

Personal profits earned by partners.

(a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm; and

(b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

17. Subject to contract between partners,—

Rights and duties of partners after a change in the firm;

(a) where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;

(b) where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and

After the expiry of the term of the firm; and

(c) Where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

Where additional undertakings are carried out.

CHAPTER IV.

RELATIONS OF PARTNERS TO THIRD PARTIES.

18. Subject to the provisions of this Act, a partner is the agent of the firm for the purposes of the business of the firm.

Partner to be agent of the firm.

19. (1) Subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

Implied authority of partner as agent of the firm.

The authority of a partner to bind the firm, conferred by the section, is called his "implied authority."

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

(a) submit a dispute relating to the business of the firm to arbitration,

(b) open a banking account on behalf of the firm in his own name,

(c) compromise or relinquish any claim or portion of a claim by the firm,

(d) withdraw a suit or proceeding filed on behalf of the firm,
(e) admit any liability in a suit or proceeding against the firm,
(f) acquire immovable property on behalf of the firm,
(g) transfer immovable property belonging to the firm, or
(h) enter into a partnership on behalf of the firm.

Extension and restriction of partner's implied authority.

20. The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner.

Notwithstanding any such restriction, any act, done by a partner on behalf of the firm, which falls within his implied authority, binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.

Partner's authority in an emergency.

21. A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.

Mode of doing act to bind firm.

22. In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

Effect of admission by partner.

23. An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

Effect of notice to acting partner.

24. Notice to a partner who habitually acts in the business of the firm of any matter relating to the affairs of the firm, operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

Liability of a partner for acts of the firm

25. Every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner.

Liability of the firm for wrongful acts of a partner.

26. Where by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.

Liability of firm for misapplication by partners.

27. Where—

(a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or

(b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

28. (1) Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

Holding out.

(2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

29. (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transfering partner, and the transferee shall accept the account of profits agreed to by the partners.

Rights of transferee of a partner's interest.

(2) If the firm is dissolved or if the transfering partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transfering partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

30. (1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

Minors admitted to the benefits of partnership.

(2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

(3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.

(4) Such minor may not sue the partners for an account or payment of his share of he property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valutaion made as far as possible in accordance with the rules contained in Section 48:

Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the Court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.

(5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm:

Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

(6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.

(7) Where such person becomes a partner—

(a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership, and

(b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

(8) Where such person elects not to become a partner—

(a) his rights and liabilities shall continue to be those of a minor under this Section up to the date on which he gives public notice,

(b) his share shall not be liable for any acts of the firm done after the date of the notice, and

(c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).

(9) Nothing in sub-sections (7) and (8) shall affect the provisions of Section 28.

CHAPTER V.

INCOMING AND OUTGOING PARTNERS.

Introduction of a partner.

31. (1) Subject to contract between the partners and to the provisions of Section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

(2) Subject to the provisions of Section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

Retirement of a partner.

32. (1) A partner may retire—

(a) with the consent of all the other partners,

(b) in accordance with an express agreement by the partners, or

(c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.

(2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his etirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement:

Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.

(4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

33. (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.

Expulsion of a partner.

(2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

34. (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is thereby dissolved.

Insolvency of a partner.

(2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

35. Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.

Liability of estate of deceased partner.

36. (1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary he may not.—

Rights of outgoing partner to carry on competing business.

(a) use the firm name,

(b) represent himself as carrying on the business of the firm, or

(c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

(2) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within specified local limits: and, notwithstanding anything contained in Section 28 of the Travancore Contract Act, such agreement shall be valid if the restrictions imposed are reasonable.

Agreements in restraint of trade.

37. Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representatives, to such share of the profits made since he ceased to be partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm:

Rights of outgoing partner in certain cases to share subsequent profits.

Provided that where by contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

38. A continuing guarantee given to a firm or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.

Revocation of continuing guarantee by change in firm.

CHAPTER VI.

Dissolution of a Firm.

39. The dissolution of partnership between all the partners of a firm is called the "dissolution of the firm."

Dissolution of firm.

40. A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.

Dissolution by agreement.

41. A firm is dissolved—

Compulsory dissolution.

(a) by the adjudication of all the partners or of all the partners but one as insolvent, or

(b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership:

Provided that, where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

42. Subject to contract between the partners a firm is dissolved —

Dissolution on the happening of certain contingencies.

(a) if constituted for a fixed term, by the expiry of that term,

(b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;

(c) by the death of a partner; and

(d) by the adjudication of a partner as an insolvent.

43. (1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.

Dissolution by notice of partnership at will.

(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

44. At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—

Dissolution by the Court.

(a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;

(b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;

(c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;

(d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;

(e) that a partner, other than the partner suing, has in any way transferred the whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 47 of Order XXI of the First Schedule to the Code of Civil Procedure, 1100, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;

(f) that the business of the firm cannot be carried on save at a loss; or

(g) on any other ground which renders it just and equitable that the firm should be dissolved.

Liability for acts of partners done after dissolution.

45. (1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution:

Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner.

Right of partners to have business wound up after dissolution.

46. On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

Continuing authority of partners for purposes of winding up.

47. After the dissolution of a firm the authority of each partner to wind the firm, and the other mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise:

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

Mode of settlement of accounts between partners.

48. In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—

(*a*) Losses including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—

(i) in paying the debts of the firm to third parties;

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

Payment of firm debts and of separate debts.

49. Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus, if any, in the payment of the debts of the firm.

Personal profits earned after dissolution.

50. Subject to contract between the partners, the provisions of clause (a) of Section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up:

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

Return of premium on premature dissolution

51. Where a partner has paid a premium on entering into partnership for a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner, unless—

(a) the dissolution is mainly due to his own misconduct, or

(b) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.

Rights where partnership contract is rescinded for fraud or misrepresentation.

52. Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

(a) to a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

(b) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and

(c) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

53. After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up:

Right to restrain from use of firm name or firm property.

Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

54. Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in Section 28 of the Travancore Contract Act, such agreements shall be valid if the restrictions imposed are reasonable.

Agreements in restraint of trade.

55. (1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.

Sale of goodwill after dissolution.

(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not—

Rights of buyer and seller of goodwill.

(a) use the firm name,

(b) represent himself as carrying on the business of the firm, or

(c) solicit the custom of persons who were dealing with the firm before its dissolution.

(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in Section 28 of the Travancore Contract Act, such agreement shall be valid if the restrictions imposed are reasonable.

Agreements in restraint of trade.

CHAPTER VII.

REGISTRATION OF FIRMS.

56. (1) Our Government may appoint a Registrar of Firms for purposes of this Act.

Appointment of Registrar.

(2) The Registrar shall be deemed to be a public servant within the meaning of Section 15 of the Travancore Penal Code.

(3) The Registrar of Joint Stock Companies shall be ex-officio Registrar of Firms.

57. (1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar a statement in the prescribed form and accompanied by the prescribed fee, stating—

Application for registration.

(*a*) the firm name,

(*b*) the place or principal place of business of the firm,

(*c*) the names of any other places where the firm carries on business,

(*d*) the date when each partner joined the firm,

(*e*) the names in full and permanent addresses of the partners, and

(*f*) the duration of the firm.

The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.

(2) Each person signing the statement shall also verify it in the manner prescribed.

(3) A firm name shall not contain any of the following words, namely.—

"Maharaja," "Maha Rani," "Rani," "Princess," "Royal," "Crown," "Emperor," "Empire," "Empress," "Imperial," "King," "Queen," "Government," "State," or words expressing or implying Our sanction, approval or patronage or that of His Majesty the King Emperor or the Government of India except where the consent of Our Government to the use of words as part of the name of the firm, signifying Our sanction, approval or patronage, is obtained by an order in writing under the hand of the Chief Secretary to Our Government or, in the case of words expressing or implying the sanction, approval or patronage of His Majesty the King Emperor, or the Government of India, the Governor-General in Council signifies his consent to the use of such words as part of the name of the firm by order in writing under the hand of one of the Secretaries to the Government of India.

58. When the Registrar is satisfied that the provisions of Section 57 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement.

Registration.

59. (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration, and signed and verified in the manner required under Section 57.

Recording of alterations in firm name and principal place of business.

(2) When the Registrar is satisfied that the provisions of Sub-Section (1) have been duly complied with he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under Section 58.

60. When a registered firm discontinues business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in

Noting of closing and opening of branches.

the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under Section 58.

Noting of changes in names and addresses of partners.

61. When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in Section 60.

Recording of changes in and dissolution of a firm.

62. (1) When a change occurs in the constitution of a registered firm, any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under Section 58.

Recording of withdrawal of a minor.

(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent specially authorised in this behalf, may give notice to the Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1).

Rectification of mistakes.

63. (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.

(2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

Amendment of Register by order of Court.

64. A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.

Inspection of Register and filed documents.

65. (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.

(2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fees as may be prescribed.

Grant of copies.

66. The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

67. (1) Any statement, intimation, or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.

Rules of evidence.

(2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

68. (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

Effect of non-Registration.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to claim of set-off or other proceeding to enforce a right arising from contract, but shall not affect—

(*a*) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(*b*) the powers of an Official Receiver or Court under the Travancore Insolvency Act to realise the property of an insolvent partner.

(4) This section shall not apply—

(*a*) to firms or to partners in firms which have no place of business in Travancore, or

(*b*) to any suit or claim of set-off not exceeding one hundred rupees in value, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

69. Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both.

Penalty for furnishing false particulars.

70. (1) Our Government may make rules prescribing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Registrar of Firms:

Power to make rules.

Provided that such fees shall not exceed the maximum fees specified in the Schedule.

(2) Our Government may make rules:—

(a) prescribing the form of statement submitted under Section 57, and of the verification thereof;

(b) requiring statements, intimations and notices under Sections 59, 60, 61 and 62 to be in the prescribed form, and prescribing the form thereof;

(c) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;

(d) regulating the procedure of the Registrar when disputes arise;

(e) regulating the filing of documents received by the Registrar;

(f) prescribing conditions for the inspection of original documents;

(g) regulating the grant of copies;

(h) regulating the elimination of registers and documents;

(i) providing for the maintenance and form of an Index to the Register of Firms; and

(j) generally, to carry out the purpose of this Chapter.

(3) All rules made under this section shall be subject to the condition of previous publication.

CHAPTER VIII.

SUPPLEMENTAL.

Mode of giving public notice.

71. A public notice under this Act is given—

(a) where it relates to the retirement or expulsion of a partner from a registered firm or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under Section 62, and by publication in Our Government Gazette; and

(b) in any other case, by publication in Our Government Gazette.

Savings.

72. Nothing in this Act shall affect or be deemed to affect—

(a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act, or

(c) anything done or suffered before the commencement of this Act, or

(d) any rule of insolvency relating to partnership, or

(e) any rule of law relating to partnership or otherwise not inconsistent with this Act.

SCHEDULE.

Maximum Fees.

(See Sub-section (1) of Section 70).

Document or act in respect of which the fee is payable.	*Maximum fee.*
Statement under Section 57	Three rupees
Statement under Section 59	One rupee
Intimation under Section 60	One rupee
Intimation under Section 61	One rupee
Notice under Section 62	One rupee
Application under Section 63	One rupee
Inspection of the Register of Firms under sub-section (1) of Section 65	Eight annas for inspecting one volume of the Register.
Inspection of documents relating to a firm under sub-section (2) of Section 65	Eight annas for the inspection of all documents relating to one firm.
Copies from the Register of Firms	Four annas for each hundred words or part thereof.

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THE TRAVANCORE SPECIFIC RELIEF BILL.

(As passed by the Sri Mulam Assembly.)

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THE TRAVANCORE SPECIFIC RELIEF ACT.

AN ACT TO DEFINE THE LAW RELATING TO CERTAIN KINDS OF SPECIFIC RELIEF.

Preamble.

Whereas it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits ; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. This Act may be called the Travancore Specific Relief Act It extends to the whole of Travancore. It shall come into force at once.

Interpretation clause.

2. In this Act, unless there be something repugnant in the subject or context, "Immovable property" includes lands, benefits arising from land, and things attached to the earth or permanently fastened to anything attached to the earth.

"Movable property" means property of every description except immovable property.

"Obligation" includes every duty enforceable by law.

"Trust" includes every species of express, implied or constructive fiduciary owrership.

"Trustee" includes every person holding expressly or by implication or constructively a fiduciary character.

Illustrations.

(*a*) Z bequeaths lands to A, "not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life." A accepts the bequest. A is a trustee, with in the meaning of this Act, for B, to the extent of the annuity.

(*b*) A is the legal, medical or spiritual advisor of B. By availing himself of his situation as such adviser, A gains some pecu niary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(*c*) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(*d*) A, the mortgagee of certain lease-holds, renews the lease in his own name. A is a trustee within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(*e*) A, one of several partners, is employed to purchase goods for the firm. A. unknown to his co-partners, supplies them, at the market price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee for his co-partners, within the meaning of this Act, of theprofits so made.

(*f*) A, a manager of B's rubber factory, becomes agent for C, a vendor of rubber, and receives, without B's assent, commission on the rubber purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(*g*) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the lands so bought.

(*h*) A buys lands from B, having notice that C is in occupation of the land A omits to make any enquiry as to the nature of C's interest therein. A is a trustee within the meaning of this Act, for C, to the extent of that interest.

"Settlement" means any instrument (other than a will or a codicil as defined in the Wills Act VI of 1074) whereby the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of; and

All words occurring in this Act which are defined in the Travancore Contract Act, shall be deemed to have the meanings respectively assigned to them by that Act.

Savings.

3. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(*a*) to give any right of relief in respect of an agreement which is not a contract;

(*b*) to deprive any person of any right to relief, other then specific performance, which he may have under any contract: or

(*c*) to affect the operation of the Registration Act on documents.

4. Specific Relief is given—

Specific Relief, how given.

(a) by taking possession of certain property and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by preventing a party from doing that which he is under an obligation not to do;

(d) by determining and declaring the rights of parties otherwise than by an award of compensation; or

(e) by appointing a receiver.

5. Specific Relief granted under clause (c) of Section 4 is called "Preventive Relief."

Preventive Relief.

6. Specific Relief cannot be granted for the mere purpose of enforcing a penal law.

Relief not granted to enforce penal law.

PART II.

Of Specific Relief.

Chapter I.

Of Recovering Possession of Property.

(a) *Possession of Immovable Property.*

7. A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.

Recovery of specific immovable property.

8. If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

Suit by person dispossessed of immovable property.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against Our Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b) *Possession of Movable Property.*

Recovery of specific movable property.

9. A person entitled to the possession of specific movable property may recover the same in the manner prescribed by the Code of Civil Procedure.

Explanation I.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation II—A special or temporary right to the present possession fo property is sufficient to support a suit under this section.

Illustrations.

(*a*) A bequeaths land to B for his life, with remainder to C. A dies, B enters on the land, but C, without B's consent, obtains possession of the title deeds. B may recover them from C.

(*b*) A pledges certain jewels to B, to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(*c*) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(*d*) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under Section 121 of the Travancore Contract Act.

(*e*) A, a warehouse keeper is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

10. Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:

Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

(*a*) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(*b*) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(*c*) when it would be extremeey difficult to ascertain the actual damage caused by its loss;

(*d*) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations.

Of Clause (*a*)—

A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledgs the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

Of Clause (*b*)—

Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

Of Clause (*c*)—

A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market value. B may be compelled to deliver them to A.

Chapter II.

Of the Specific Performance of Contracts.

(*a*) *Conrtacts which may be specifically enforced.*

11. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced:—

Cases in which specific performance enforceable.

(*a*) when the act agreed to be done is in the performance wholly or partly, of a trust;

(*b*) when there exists no standard for ascertaining the actual damage caused by non-performance of the act agreed to be done;

(*c*) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief; or

(*d*) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Explanation—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer movable property can be thus relieved.

Illustrations.

Of Clause (*a*)—

A holds certain stock in trust for B, A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

Of Clause (*b*)—

A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

Of Clause (*c*)—

1. A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase money.

2. In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway company contracts with Z to make an archway through their railway, to connect lands of Z severed by the railway, to construct a road between certain specific points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enfored for his interests in its performance cannot be adequately compensated for by money and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

3. A contracts to sell, and B contracts to buy, a certain number of shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform the agreement for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a share-holder, which cannot otherwise be procured.

4. A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

Of clause (d)—

A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed as his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

Contract of which the subject has partially ceased to exist.

12. Notwithstanding anything contained in Section 57 of the Travancore Contract Act, a contract is not wholly impossible of performance because a portion of its subject matter, existing at its date, has ceased to exist at the time of the performance.

Illustrations.

(*a*) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase money.

(*b*) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made B is thrown from his horse and killed B's representative may be compelled to pay the purchase-money.

Specific performance of part of contract where part unperformed is small.

13. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Illustrations.

(*a*) A contracts to sell B a piece of land consisting of 100 acres. It turns out that 98 acres of the land belong to A and the two remaining acres to a stranger, who refuses to part with them. The two acres are not necessary for the use or enjoyment of the 98 acres nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 acres and to make compensation to him for not conveying the two remaining acres; or B may be directed, at the suit of A, to pay to A on receiving the conveyance and possession of the land, the stipulated purchase-money less a sum awarded as compensation for the deficiency.

(*b*) In a contract for the sale and purchase of a house and lands for 2 lakhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture and may either have the furniture valued in the suit and include it in the decree for specific performance or may confine its decree to the house.

Specific performance of part of contract where part unperformed is large.

14. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(*a*) A contracts to sell to B a piece of land consisting of 100 acres. It turns out that 50 acres of the land belong to A and the other 50 acres to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 acres which belong to A waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 acres to him on payment of the purchase money.

(*b*) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of

the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract, but if B is willing to pay the price agreed upon and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

Specific performance of independent part of contract.

15. When a part of a contract which, taken by itself, can and ought to be specifically performed stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract.

16. The Court shall not direct the specific performance of a part of a contract except in cases coming under one or other of the three last preceding sections.

Purchaser's rights against vendor with imperfect title.

17. Where a person contracts to sell or let certain property, having only an imperfect title there to, the purchaser or lessee (except or otherwise provided by this Chapter) has the following rights :—

(*a*) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;

(*b*) where the concurrence of other persons is necessary to validate the title and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;

(*c*) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a coveyance from the mortgagee ;

(*d*) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his imperfect title, the defendant has the right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

Power to award compensation in certain cases.

18. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

Explanation :—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising jurisdiction conferred by this Section.

Illustrations.

Of the second paragraph.

A contracts to sell a hundred parahs of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

Of the third paragraph.

A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st Chingam 1115. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation which is decided in his favour on 1st Chingam 1116. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

Of the explanation.

A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the director of a public company under which he was entitled to have certain number of shares allotted to him and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may under this section award A compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

19. A contract otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a licence necessary to the validity of the under-lease, and that, if the licence is not procured, A will pay B Rs. 10,000. A refuses to apply for the licence and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the licence.

(*b*) *Contracts which cannot be specifically enforced.*

Contracts not specifically enforceable.

20. The following contracts cannot be specifically enforced :—

(*a*) a contract for the non-performance of which compensation in money is an adequate relief;

(*b*) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature, is such, that the Court cannot enforce specific performance of its material terms;

(*c*) a contract, the terms of which the Court cannot find with reasonable certainty ;

(*d*) a contract which is in its nature revocable;

(*e*) a contract made by trustees either in excess of their powers or in breach of their trust ;

(*f*) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company which is in excess of its powers ;

(*g*) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date ;

(h) a contract of which a material part of the subject matter, supposed by both parties to exist, has, before it has been made, ceased to exist;

and, save as provided by the Code of Civil Procedure and the Travancore Arbitration Act, no contract to refer present or future difference to arbitration shall be specifically enforced.

Illustrations.

To Clause (a).

A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India.

A contracts to sell, and B contracts to buy, 40 chests of tea at Rs. 100 per chest.

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000 and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for in the 1st and 2nd both A and B, and in the 3rd A, would be reimbursed by compensation in money.

To Clause (b).

A contracts to render personal service to B. A contracts to employ B on personal service. A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed;

By a charter-party entered into in Alleppey between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Bombay, and there load a cargo of cotton, and thence proceed to London, freight to be paid, one-third on arrival at Bombay, and two-thirds on delivery of the cargo in London;

A lets land to B and B contracts to cultivate it in a particular manner for 3 years next after the date of the lease;

A and B contract that, in consideration of annual advances to be made by A, B will for 3 years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery;

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B;

A contracts with B to execute certain works which the Court cannot superintend;

A contracts to supply B with all the goods of a certain class which B may require;

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach;

A contracts to marry B;

The above contracts cannot be specifically enforced.

To Clause (c).

A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

To Clause (d).

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. The contract cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

To Clause (e).

A is a trustee of land with power to lease it for 7 years. He enters into a contract with B to grant a lease of the land for 7 years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustess, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

To Clause (f).

A company existing for the sole purpose of making and working a railway contract for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

To Clause (g).

A contracts to let for twenty-one years to B, the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

To Clause (h).

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically enforced.

(c) Of the discretion of the Court.

Discretion as to decreeing specific performance.

21. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of Appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part

Illustrations.

(*a*) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(*b*) A contracts to sell to B the interest of C in certain stock-in trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(*c*) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(*d*) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(*e*) A is entitled to some land under his father's will on condition that if he sells it within 25 years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the 25 years, to sell the land to C. Here the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(*f*) A and B, trustees join their beneficiary, C, in a contract to sell the trust estate to D and personally agree to exonerate the estate from heavy encumbrances to which it is subject. The purchase-money is not nearly enough to discharge those encumbrances.

though at the date of the contract the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(g) A, the owner of an estate, contracts to sell it to B and stipulates that he (A) shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B unless he waives his claim to the unknown property

(h) A contracts with B to sell him certain land, and to make a road to it from a certain railway station. It is found afterwards, that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for the loss of the road.

(i) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j) A contracts to buy certain lands from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance:—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d) For whom contracts may be specifically enforced.

Who may obtain specific performance.

22. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto:

Provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed;

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder man;

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and reversioner is entitled to the benefit of such covenant;

(f) a reversioner in remainder, where the agreement is such a covenant and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;

(g) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incoporation, the company.

(e) For whom contract cannot be specifically enforced.

Personal bars to the rules.

23. Specific performance of a contract cannot be enforced in favour of a person—

(a) who could not recover compensation for its breach;

(b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;

(*c*) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or

(*d*) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations.

To Clause (a).

A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting not as agent for B but on his own account. A cannot enforce specific performance of this contract.

To Clause (b).

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenant on the part of A to keep the house in repair. B finishes the house in a very defective manner. He cannot enforce the contract specifically though A and B may sue each other for compensation for breach of it.

To Clause (c).

A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title or who is a voluntary settler.

24. A contract for the sale or letting of property, whether movable or immovable, cannot be specifically enforced in favour of a vendor or lessor—

(*a*) who, knowing himself not to have any title to the property, has contracted to sell or let the same;

(*b*) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;

(*c*) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract;

Illustrations.

(*a*) A, without C's authority, contracts to sell B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(*b*) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(*c*) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(*d*) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a stranger. A cannot enforce specific performance of this contract so as to over-ride the settlement and thus prejudice the interests of the persons claiming under it.

(*f*) *For whom contracts cannot be specifically enforced, except with a variation.*

Non-enforcement except with variation.

25. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely:—

(*a*) where by fraud or mistake of fact, the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;

(*b*) where by fraud, mistake of fact or surprise, the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;

(*c*) where the defendant, knowing the terms of the contract and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil;

(*d*) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;

(*e*) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(*a*) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake ; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(*b*) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(*c*) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract except with the variation set up by B.

(*d*) A and B enter into negotiations for the purpose of securing land for B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turnsout to be not worth repairing. So with B's consent, A pulls it down and erects a new house in its place, B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(g) *Against whom contracts may be specifically enforced.*

Relief against parties and persons claiming under them by subsequent title.

26. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto ;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant ;

(d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(e) when the promoters of a public company have, before its incorporation, entered into a contract, the company : provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations.

To Clause (b)

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land B may compel A's heir or other represntative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no

enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his guardian. B may specifically enforce the contract against C.

To Clause (c)

A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alienate in his life-time, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

Specific performance in case of part-performance of contract to lease

27. Subject to the provisions of this Chapter where a contract to lease immovable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if—

(*a*) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part-performance of the contract ; and

(*b*) where specific performance is claimed by the lessee, he has in part-performance of the contract taken possession of the property, or, being already in possession, continues in possession in part-performance of the contract, and has done some act in furtherance of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part-performance thereof.

(h) Against whom contracts cannot be specifically enforced.

What parties cannot be compelled to perform.

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases:—

(*a*) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances, evidence of fraud or of undue advantage taken by the plaintiff;

(*b*) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practice, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(*c*) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations to Clause (c).

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 acres of this land but the auctioneer inadvertently sells the whole to B, who has no notice of the revocation. B cannot enforce specific performance of the agreement.

(i) The effect of dismissing the suit for specific performance.

Bar of suit for breach after dismissal.

29. The dismissal of the suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(*j*) *Awards and directions to execute settlement.*

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this Chapter as to contracts shall, *mutatis mutandis* apply to awards and directions in a will or codicil to execute particular settlements.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

When instrument may be rectified.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified ; and if the Court finds it clearly proved that there has been fraud or mistake in framing the instrument, and ascertains the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(*a*) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all the three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(*b*) By a marriage settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

Presumption as to intent of parties.

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequence; and is not confined to the inquiry what the language of the instrument was intended to be.

Principles of rectification.

34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

Specific performance of rectified contracts.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV.

Of the Rescission of Contracts.

35. Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely:—

When rescission may be adjudged.

(*a*) where the contract is voidable or terminable by the plaintiff;

(*b*) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff;

(*c*) where a decree for the specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as regards the party in default, or altogether, as the justice of the case may require.

Illustration.

To Clause (a).

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

To Clause (b).

A, a vakil, induces his client B to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault and B is entitled to have the instrument of transfer rescinded.

Rescission for mistake.

36. Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative prayer for rescission in suit for specific performance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Court may require party rescinding to do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

Of the Cancellation of Instrument.

When cancellation may be ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left out-standing, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Travancore Registration Act, the Court shall send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(*a*) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an under-writer, to insure her. B may obtain the cancellation of the policy.

(*b*) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(*c*) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st Chingom 1115. Soon after that day, A fraudulently grants to C a lease of a part of the lands, dated the 1st Mithunam 1114, and procures it to be registered under the Registration Act. B may obtain the cancellation of this lease.

(*d*) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

What instrument may be partially cancelled.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

Power to require party to whom instrument is cancelled to make compensation.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER VI.

OF DECLARATORY DECREES.

Discretion of Court as to declaration of status or right.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Bar to such declaration.

Provided that no Court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

Explanation:—A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(*a*) A is lawfully in possession of certain lands. The inhabitants of the neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(*b*) A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst the surviving children." No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives and it may also declare the interests of the children before their rights are vested.

(*c*) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(*d*) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

(*e*) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may, in a suit

Annexure VII.

THE TRAVANCORE ARBITRATION BILL.

(As passed by the Sri Mulam Assembly).

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,, 4. Enlargement of time by arbitrator by endorsement on submission.
,, 5. Special case.
,, 6. Award.

(c) where the invasion is such that pecuniary compensation would not afford adequate relief;

(d) where it is probable that pecuniary compensation cannot be got for the invasion ; and

(e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Explanation. For the purpose of this section a trade mark is property.

Illustrations.

(a) A lets certain lands to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b) A, a trustee, threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c) The Directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may sue for an injunction to restrain them.

(d) The Directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(h) In the course of A's employment as a vakil, certain papers belonging to his client B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain him from so doing.

(i) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of

B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(*j*) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(*k*) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seeds injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husband-like manner.

(*l*) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership property. B and C may without seeking a dissolution of the partnership sue for an injunction to restrain A from doing the act.

(*m*) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The reversioner may sue for an injunction to restrain her.

(*n*) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family property and threatens to destroy part of the family house and to sell some of the family utensils. B and C may sue for an injunction to restrain him.

(*o*) A, the owner of certain houses in Trivandrum, becomes insolvent. B buys them from the official receiver and enters into possession. A persists in trespassing on and damaging the houses and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(*p*) The inhabitants of a village claim a right of way over A's land. In a suit against several of them A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(*q*) A, in an administration suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B

proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(*r*) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's *mine* and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(*s*) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(*t*) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(*u*) A infringes B's patent. If the Court is satisfied that the patent is valid and had been infringed, B may obtain an injunction to restrain the infringement.

(*v*) A pirates B's copy right. B may obtain an injunction to restrain the piracy, unless the work of which copy-right is claimed is libellous or obscene.

(*w*) A improperly uses the trade mark of B. B may obtain an injunction to restrain the user, provided that B's use of the trade mark is honest.

(*x*) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(*y*) A, a very eminent man, writes letters on family topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(*z*) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

48. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite act.

Mandatory injunctions.

Illustrations.

(*a*) A, by new buildings, obstructs light to the access and use of which B has acquired a right under the Travancore Limitation Act. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(*b*) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(*c*) In the case put as illustration (*i*) to Section 47, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(*d*) In the case put as illustration (*y*) to Section 47, the Court may also order A's letters to be destroyed.

(*e*) A threatens to publish statement concerning B which would be punishable under Chapter XXI of the Travancore Penal Code. The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property.

(*f*) A, being B's medical adviser, threatens to publish B's written communications to him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(*g*) In the cases put as illustrations (*v*) and (*w*) to Section 47 and as illustrations (*e*) and (*f*) to this section, the Court may also order the copies produced by piracy, and the trade marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

Injunction when refused.

49. An injunction cannot be granted :—

(*a*) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings ;

(*b*) to stay proceedings in a Court not subordinate to that from which the injunction is sought ;

(*c*) to restrain persons from applying to any legislative body ;

(*d*) to interfere with the public duties of any department of Our Government ;

(*e*) to stay proceedings in any criminal matter ;

(*f*) to prevent the breach of a contract the performance of which would not be specifically enforced ;

(*g*) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance ;

(*h*) to prevent a continuing breach in which the applicant has acquiesced ;

(*i*) when equally efficascious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust ;

(*j*) when the conduct of the applicant or his agent has been such as to disentitle him to the assistance of the Court ; and

(*k*) where the applicant has no personal interest in the matter.

Illustrations.

(*a*) A seeks an injunction to restrain his partner, B. from receiving the partnership debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(*b*) A manufactures and sells crucibles, designating them as "patent plumbago crucibles" though in fact they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(*c*) A sells an article called "Mexican Balm" stating that it is compounded of diverse rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's "Mexican Balm." A sues B for an injunction to restrain the sale. B shows that A's "Mexican Balm" consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

Injunction to perform negative agreement.

50. Notwithstanding Section 49, clause (*f*), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to

compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: Provided that the applicant has not failed to perform the contract so far as it is binding on him.

Illustrations.

(*a*) A contracts to sell to B for Rs. 1,000 the good will of a certain business unconnected with business premises, and further agrees not to carry on that business in Trivandrum. B pays A the Rs. 1,000 but A carries on the business in Trivandrum. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Trivandrum.

(*b*) A contracts to sell to B, the goodwill of a business. A then sets up a similar business close by B's shop and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good will may be withdrawn from B.

(*c*) A contracts with B to sing for 12 months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(*d*) B contracts with A that he will serve him faithfully for 12 months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(*e*) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

Repeal of enactments.

51. On and from the day on which this Act comes into force the enactment mentioned in the Schedule annexed to this Act shall be repealed to the extent specified in the third column thereof and in the place of the words "under Section 32 of the Act" so repealed from Article 2 of the first schedule of that enactment the words "under Section 8 of the Travancore Specific Relief Act" shall be substituted."

Savings.

52. Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect;—

(*a*) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(*b*) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or

(*c*) anything done or suffered before the commencement of this Act, or

(*d*) any rule of law not inconsistent with this Act.

SCHEDULE.

Enactment Repealed.

(*See Section 51.*)

Number and year of enactment.	Short title.	Extent of Repeal.
VI of 1100	The Travancore Limitation Act.	Section 32 and the words "under Section 32 of the Act" occurring in Article 2 of the first Schedule.

against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's lifetime.

(*f*) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son, may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(*g*) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(*h*) A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but, if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's life time, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

Effect of declaration.

43. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother are defendants, seeks a declaration that his marriage was duly solemnised and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

Of the Appointment of Receivers.

Appointment of receiver discretionary.

44. The appointment of a receiver pending a suit is a matter resting in the discretion of the Court.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.

PART III.

Of Preventive Relief.

CHAPTER VIII.

Of Injunctions generally.

45. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

Preventive Relief how granted.

46. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of suit, and are regulated by the Code of Civil Procedure.

Temporary Injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Perpetual injunction.

CHAPTER IX.

Of Perpetual Injunctions.

47. Subject to the other provisions contained in, or referred to, by this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication.

Perpetual injunctions when granted.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of property, the Court may grant a perpetual injunction in the following cases, namely.—

(*a*) where the defendant is trustee of the property for the plaintiff;

(*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

THE TRAVANCORE ARBITRATION BILL.

Whereas it is expedient to enact a law relating to arbitration by agreement without the intervention of a Court of Justice, it is hereby enacted as follows:—

Preamble.

Short title, extent and commencement.

1. (1) This Act may be called "The Travancore Arbitration Act."

(2) It extends to the whole of Travancore ; and

(3) It shall come into force at once.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context:—

(a) "the Court" means the Court where, if the subject matter submitted to arbitration were the subject of a suit, the suit would have to be instituted ; and

(b) "submission" means a written agreement to submit, present or future differences to arbitration, whether an arbitrator is named therein or not.

Exclusion of certain provisions of the Civil Procedure Code in certain cases where Act applies.

3. Rules 17 to 21 of Order, XXXIX of the Code of Civil Procedure shall not apply to any submission or arbitration to which the provisions of this Act for the time being apply :

Provided that nothing in this Act shall affect any arbitration pending in any Court at the commencement of this Act, but shall apply to every arbitration commenced after the commencement of this Act under any agreement or order previously made.

Submission to be irrevocable except by leave of Court.

4. A submission, unless a different intention is expressed therein, shall be irrevocable except by leave of the Court.

Agreement not to be discharged by death of any party.

5. (1) An arbitration agreement, unless a different intention is expressed therein shall not be discharged by the death of any party thereto, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the legal representative of the deceased as the case may be.

(2) The authority of an arbitrator shall not, unless a different intention is expressed in the arbitration agreement, be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

6. A submission, unless a different intention is expressed thereinn shall be deemed to include the provisions set forth in the first schedule, in so far as they are applicable to the reference under submission.

Provisions implied in submissions

Reference to arbitrator to be appointed by third person.

7 The parties to a submission may agree that the reference shall be to an arbitrator or arbitrators to be appointed by a person designated therein.

Such person may be designated either by name or as the holder for the time being of any office or appointment

Illustrations.

The parties to a submission may agree that any dispute arising between them in respect of the subject matter of the submission shall be referred to an arbitrator to be appointed by the Alleppey Chamber of Commerce, or, as the case may be, to an arbitrator to be appointed by the president for the time being of the Alleppey Chamber of Commerce.

8. (1) In any of the following cases;—

Power for the Court in certain cases to appoint an arbitrator, umpire or third arbitrator.

(*a*) where a submission provides that the reference shall be to a single arbitrator, but no person is mentioned by name, and all the parties do not, after differences have arisen, concur in the appointment of a particular arbitrator ;

(*b*) if an appointed arbitrator neglects or refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy ;

(*c*) where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him ;

(*d*) where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, or is removed, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy;

(*e*) any party may serve the other parties or the arbitrators, as the case may be, with a written notice to concur in appointing an arbitrator, umpire or third arbitrator.

(2) If the appointment is not made with in seven clear days after the service of the notice, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard appoint an arbitrator, umpire or third arbitrator, who shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

Power for parties in certain cases to supply vacancy.

9. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless a different intention is expressed therein—

(*a*) if either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, or is removed, the party who appointed him may appoint a new arbitrator in his place ;

(*b*) if, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party having appointed his arbitrator has served the party making default with a written notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the Court may set aside any appointment made in pursuance of clause (*b*) of this section.

Powers of arbitrator.

10. The arbitrators or umpire acting under a submission shall, unless a different intention is expressed therein,—

(*a*) have power to administer oaths to the parties and witnesses appearing ;

(*b*) have power to state a special case for the opinion of the Court on any question of law involved; and

(*c*) have power to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Awards to be signed and filed.

11. (1) When the arbitrators or umpire have made their award, they shall sign it and shall give notice to the parties of the making and signing thereof and of the amount of the fees and charges payable to the arbitrators or umpire in respect of the arbitration and award.

(2) The arbitrators or umpire shall, at the request of any party to the submission or any person claiming under him, and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award, cause the award, or a signed copy of it, to be filed in the Court; and notice of the filing shall be given to the parties by the arbitrators or umpire.

(3) Where the arbitrators or umpire state a special case under Section 10 clause (*b*), the Court shall deliver its opinion thereon; and such opinion shall be added to, and shall form part of, the award.

Power for Court to enlarge time for making award

12. The time for making an award may, from time to time, be enlarged by order of the Court, whether the time for making the award has expired or not.

Power to remit award.

13 (1) The Court may, from time to time remit, the award to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted under sub-section (1), the arbitrators or umpire shall, unless the Court otherwise directs, make

a fresh award within three months after the date of the order remitting the award.

Power to set aside award.

14. Where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured, the Court may set aside the award.

Award when filed to be enforceable as a decree.

15. (1) An award on a submission, on being filed in the Court in accordance with the foregoing provisions, shall (unless the Court remits it to the reconsideration of the arbitrators or umpire, or sets it aside) be enforceable as if it were a decree of the Court.

(2) An award may be conditional or in the alternative.

Illustration.

A dispute concerning the ownership of a diamoud ring is referred to arbitration. The award may direct that the party in possession shall pay the other party Rs. 1,000, the said sum to be reduced to Rs. 5 if the ring is returned within fourteen days.

Power to remove arbitrator or umpire.

16. Where an arbitrator or umpire has misconducted himself or the proceedings, the Court may remove him.

Costs.

17. Any order made by the Court under this Act may be made on such terms as to costs or otherwise as the Court thinks fit.

Forms.

18. The forms set forth in the second schedule, or forms similar thereto, with such variations as the circumstances of each case require, may be used for the respective purposes there mentioned, and, if used, shall not be called in question.

Power to stay proceedings where there is a submission

19. Where any party to a submission to which this Act applies or any person claiming under him, commences any legal proceedings against any other party to the submission, or any person claiming under him, in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other steps in the proceedings, apply to the Court to stay the proceedings; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

Power for High Court to make rules.

20. Our High Court may make rules consistent with this Act as to:—

(a) the filing of awards and all proceedings consequent thereon or incidental thereto;

(b) the filing and hearing of special cases and all proceedings consequent thereon or incidental thereto;

(c) the staying of any suit or proceeding in contravention of a submission to arbitration; and,

(d) generally, all proceedings in Court under this Act.

Government to be bound

21. The provisions of this Act shall be binding on the Government.

THE FIRST SCHEDULE.

(*See Section 6.*)

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

I. If no other mode of reference is provided, the reference shall be to a single arbitrator.

II. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

III. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, or on or before any later day to which the arbitrators, by any writing signed by them, may, from time to time, enlarge the time for making the award.

IV. If the arbitrators have allowed this time or extended time to expire without making an award or have delivered to any party to the submission, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

V. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire, by any writing signed by him, may, from time to time, enlarge the time for making his award.

VI. The parties to the reference, and all persons claiming through them respectively shall, subject to the provisions of any law for the time being in force, submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire, all books deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require.

VII. The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath.

VIII. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

IX. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom, and in what manner, those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

THE SECOND SCHEDULE.

(*See Section 18.*)

FORM I.

SUBMISSION TO SINGLE ARBITRATOR.

In the matter of the Travancore Arbitration Act :—

Whereas differences have arisen and are still subsisting between A. B. of............and C. D. of .... concerning........................

Now we, the said A. B. and C. D., do hereby agree to refer the said matters in difference to the award of X. Y.

(Signed) A. B.

Dated the............11 C. D.

FORM II.

SUBMISSION OF PARTICULAR DISPUTE TO SINGLE ARBITRATOR.

In the matter of the Travancore Arbitration Act :—

Whereas differences have arisen and are still subsisting between A. B. of.........and C, D. of.., ...concerning ....

Now we, the said A. B. and C. D., do hereby agree to refer the said matters in difference to the award of X. Y.

(Signed) A. B.

C. D.

Dated the.....................11

FORM III.

Appointment of single arbitrator under agreement to refer future differences to arbitration.

In the matter of the Travancore Arbitration Act:—

Whereas, by an agreement in writing, dated the............day of......11.........and made between A. B. of.........................and C. D. of...........................,it is provided that the differences arising between the parties thereto shall be referred to an arbitrator as therein mentioned;

And whereas differences within the meaning of the said provision have arisen and are still subsisting between the said parties concerning ....

Now we, the said parties A. B. and C. D., do hereby refer the said matters in differences to the award of X. Y.

(Signed) A. B.

C. D.

Dated the..................11

FORM IV.

Enlargement of time by arbitrator by endorsement on submission.

In the matter of the Travancore Arbitration Act,

and an arbitration between A. B. of.....................and C. D. of...... ....:—

I hereby enlarge the time of making my award in respect of the matters in difference referred to me by the within (or above) submission until the............day of......11

(Signed) X. Y.

Arbitrator.

Dated the.....................11

FORM V.

Special case.

In the matter of the Travancore Arbitration Act, and an arbitration between A. B of.....................and C. D. of...............

The following special case is, pursuant to the provisions of Section 10, clause (b), of the said Act, stated for the opinion of the......... (here specify the Court)

(Here state the facts concisely in numbered paragraphs.)

The questions of law for the opinion of the said Court are:—

First, whether..

Secondly, whether..

(Signed) X. Y.

Arbitrator.

Dated the..........................11

FORM VI.

AWARD.

In the matter of the Travancore Arbitration Act, and an arbitration between A. B. of..................................and C. D. of....................................:—

Whereas in pursuance of an agreement in writing dated the.........day of..............................11............and made between A. B. of...................and C. D. of.............., the said A. B. and C. D. have referred to me, X. Y. the matters in difference between them concerning..

(or as the case may be);

Now I, the said X. Y., having duly considered the matters submitted to me, do hereby make my award as follows:—

I award—

(i) that..

(ii) that..

(Signed) X Y.

Arbitrator

Dated the....................................11

Annexure VIII.

THE TRAVANCORE INSURANCE BILL

As passed by the Sri Mulam Assembly.

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THE TRAVANCORE INSURANCE BILL.

Whereas it is expedient to consolidate and amend the law relating to the business of insurance ; It is hereby enacted as follows :—

Preamble.

PART I.

Preliminary.

1. (1) This Act may be called the Travancore Insurance Act.

Short title, extent and commencement.

(2) It extends to the whole of Travancore.

(3) It shall come into force on such date as Our Government may, by notification in Our Government Gazette, appoint in that behalf.

2. In this Act unless there is anything repugnant in the subject or context—

Definitions.

(1) "actuary" means an actuary possessing such qualifications as may be prescribed ;

(2) "approved securities" means Government securities and any other security specifically declared by Our Government as approved for this purpose ;

(3) "auditor" means a person qualified under the provisions of Section 182 of the Travancore Companies Act, 1114, to act as an auditor of companies ;

(4) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer means certified by a principle officer of the insurer to be a true copy or a correct translation, as the case may be ;

(5) "Court" means the principal Civil Court of original jurisdiction in a district ;

(6) "Foreign Insurance Company" means a company incorporated under the law of any country other than Travancore and carrying on any class of insurance business in Travancore :

(7) "Government securities" means Government securities as defined in the Travancore Government Securities Act (III of 1099) ;

(8) "Insurance Agent" means an insurance agent licensed under Section 42 being an individual who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business ;

(9) "Insurance business" means of any of the following classes of business :—

(*a*) life assurance or life insurance business that is to say, the issue of, or the undertaking of liability under policies of insurance upon human life or the granting of annuities upon human life, including annuity business, that is to say, the business of effecting contracts of insurance for the granting of annuities on human life and, if so provided in the contract of insurance, disability and double indemnity accident benefits ;

(*b*) fire insurance, that is to say, the issue of or the undertaking of liability under policies of insurance against loss by or incidental to fire ;

(*c*) accident insurance business, that is to say, the issue of, or the undertaking of liability under policies of insurance upon the happening of personal accidents whether fatal or not, disease, or sickness ;

(*d*) marine insurance business, that is to say, the issue of, or the undertaking of liability under policies of insurance against the loss of or damage to ships, cargo or freight, by perils of the sea ;

(*e*) miscellaneous insurance business, including—

(i) employers' liability business, that is to say, the issue of or the undertaking of liability under policies insuring employers against liability to pay compensation or damages to workmen in their employment ;

(ii) bond investment business, that is to say, the business of issuing bonds or endowment certificates by which the company in return for subscriptions payable periodically at intervals of less than six months contracts to pay the bond-holder a sum at a future date such business not being life insurance business as defined in clause (a) of this definition, or sinking fund or capital redemption insurance business ;

(iii) motor vehicle insurance business, that is to say, the business of effecting contracts of insurance against loss of motor vehicles or damage arising out of use are in connection with the use of motor vehicles, including third party risk ; and

(iv) aircraft insurance business, that is to say, the business of effecting contracts of insurance for the purpose of insuring owners or heirs of any aircraft against loss of, or damage to or arising out of or in connection with the use of the aircraft, including third party risks ;

(10) "Insurance Company" means any insurer being a company, association or partnership which may be wound up under the Travancore Companies Act (IX of 1114) or to which the Travancore Partnership Act applies ;

(11) "Insurer" means—

(*a*) an insurer domiciled in Travancore, that is to say, an individual or unincorporate body of individuals domicilied in Travancore and carrying on insurance business in Travancore or having in Travancore the principal office or place for the conduct of such business ;

(*b*) an insurer established in Travancore, that is to say, an individual or unincorporate body of individuals not domiciled in Travancore, or a foreign insurance company, carrying on insurance business in Travancore or having in Travancore the principal office or place for the conduct of such business ;

(c) local insurance company, that is to say, any body corporate carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in Travancore or stands to any such body corporate in the relation of a subsidiary company as defined in sub-section (2) of Section 2 of the Travancore Companies Act IX of 1114 ;

(d) an underwriters's agent that is to say, any person who in Travancore has a standing contract with underwriters who are members of the society of Lloyds whereby such person is authorised within the terms of such contract to issue protection notes, cover notes or other documents granting insurance cover to others on behalf of the under writers :

but does not include an insurance agent or a provident society to which the provisions of Part III apply.

(12) "manager" and "officer" have the meaning assigned to those expressions in clauses (viii) and (xi) respectively of Section 2 of the Travancore companies Act, IX of 1114 ;

(13) "Managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the Directors except to the extent, if any otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called ;

(14) "policy-holder" includes the person who is the absolute assignee of the benefits under the policy ;

(15) "prescribed" means prescribed by rules made under this Act ; and

(16) "Registrar" means any person who may be appointed by Our Government to perform the duties of Registrar under this Act.

(17) "Calendar year" means a year reckoned according to the British Calendar and commencing with the first day of January.

PART II.

Provisions applicable to Insurers.

Registration.

3. (1) No individual or unincorporate body of individuals or body corporate shall, after the commencement of this Act begin to carry on any class of insurance business in Travancore, and no insurer carrying on any class of insurance business in Travancore shall after the expiry of three months from the commencement of this Act continue to carry on any such business unless such individual, body company or insurer has been registered under this Act and has obtained from the Registrar a certificate of registration.

Explanation. — A local insurance company which carries on any insurance business in any country other than Travancore ; a foreign insurance company which has any branch or office of any kind in Travancore or employs any agent or servant for the purpose of canvassing, soliciting or procuring insurance business or collecting insurance premia in Travancore ; any insurer who notwithstanding that he has ceased to issue polices or to undertake liabilities under policies in Travancore has to meet any unsettled claim or to discharge any liability under a paid up policy in Travancore, shall for purposes of this Section be deemed to be carrying on insurance business in Travancore.

(2) Every application for registration shall be accompanied by the following :—

(*a*) (i) in the case of company incorporated under the Travancore Companies Act IX of 1114 or under the Travancore Companies Act, 1092, a copy of the Memorandum and Articles of Association, or

(ii) In the case of a foreign insurance company or an insurer or intending insurer having his domicile or principal office or place of business outside Travancore, the documents specified in Clause (*c*) of Section 63 ; or

(iii) In the case of any other insurer or intending insurer, a certified copy of any agreement, deed or other instrument under which the insurance business of such insurer or intending insurer was constituted or established ; and

(*b*) a statement setting out :

(i) in the case of a company incorporated under the Travancore Companies Act IX of 1114, or under the Travancore Companies Act 1092, the name and address and the occupation, if any, of each of the directors of the company.,

(ii) in the case of an insurer or intending insurer domiciled in Travancore the name and the address of the proprietor of the insurance business where such insurer or intending insurer is an individual or of each of the partners or members where the insurer or intending insurer is an unincorporate body and the name and address of the manager of the business in Travancore : or

(iii) in the case of any other insurer of intending insurer, the address of principal office or place of business of such insurer or intending insurer in Travancore and the full name and address of each of the directors where such insurer or intending insurer is a company of each of the partners where such insurer or intending insurer is an unincorporate body or of the proprietor where such insurer or intending insurer is an individual and the name and address of the manager of the business in Travancore and of one or more persons resident in Travancore and authorised to accept any notice required to be served on the insurer or intending insurer ; and

(*c*) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by Section 7 or Section 98 before application for registration is made has been deposited together with a certificate from Our Accountant General showing the amount deposited ; and

(*d*) where the provisions of Section 6 or Section 97 apply, a declaration made by the principal officer of the insurer or intending insurer authorised in that behalf and verified by affidavit that the provisions of those sections as to working capital have been complied with ; and

(*e*) in the case of an insurer or intending insurer having his principal place of business or domicile outside Travancore a statement made by the principal officer of the insurer or intending insurer authorised in that behalf verified by affidavit and setting forth the conditions or requirements (if any)

not applicable to *nationals* of the country in which such insurer or intending insurer is domiciled or constituted or incorporated, which are imposed by the laws or practice of that country upon *nationals* of Travancore commencing or carrying on insurance business in that country; and

(f) a certified copy of the published prospectus, if any, and of each of the standard policy forms used or to be used by the insurer or intending insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies and, where life insurance business is or is to be carried on, a certificate by an actuary that such rates, advantages, terms and conditions so far as they relate to such life insurance business are workable and sound;

Provided that in the case of marine accident and miscellaneous insurance business other than employer's liability and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available, and

(g) the fee for registration at such rate not exceeding one hundred rupees for each class of business as may be prescribed.

(3) The Registrar shall, on being satisfied that the insurer or intending insurer has fulfilled all the requirements of the Act applicable to him, register the insurer or intending insurer and issue to him a certificate of registration.

(4) In the case of any insurer or intending insurer having his domicile or principal place of business outside Travancore, the Registrar, shall withhold registration or shall cancel a registration already made, if he is satisfied—

(*a*) that in the country in which such insurer or intending insurer has his principal place of business or domicile, *nationals* of Travancore are debarred by the law or practice of the country relating to or applied to insurance from carrying on the business of insurance, or

(*b*) that any requirement imposed upon such insurer or intending insurer under the provisions of Section 62 has not been complied with by him.

(5) The Registrar shall cancel the registration already made of any insurer who fails after registration under this Act to comply with the provisions of Section 7 or Section 98 as to deposits.

(6) When the Registrar decides to withhold or to cancel any registration under the sub-section 4 or sub-section 5 he shall send written notice of his decision to the insurer by registered Anchal or post and the decision shall take effect on the date specified in that behalf by the Registrar in the notice, such date not being less than one month nor more than two months from the date on which the notice may, in the ordinary course of transmission by Anchal or Post, be deemed to have been received by the insurer.

Minimum limits for annuities and other benefits secured by policies of insurance.

4. (1) No insurer, other than a Co-operative Life Assurance Society or a Mutual Insurance Company to which Part IV of this Act applies, shall pay or undertake to pay on any policy of life insurance issued after the commencement of this Act an annuity of fifty rupees or less or a gross sum of rupees five hundred or less exclusive of any profit or bonus, provided that this shall not prevent an insurer from converting any policy into a paid up policy of any value or the payment of a surrender value of any amount.

(2) Nothing contained in this section shall apply to group policies, that is to say, policies in respect of a group of persons engaged in the same occupation or kindred occupations under a single employer for an aggregate sum of not less than rupees five thousand, under which an insurer pays or undertakes to pay a gross sum of rupees five hundred or less on an individual life.

Restriction on name of insurer.

5. (1) An insurer shall not be registered under a name identical with the name under which any other insurer in existence is already registered, or likely by reason of its resemblance to that name to mislead or deceive the public as to the identity of the insurer unless steps or proceedings for the dissolution of such other insurer have been commenced and such other insurer signifies to the Registrar his consent *in such manner as the Registrar requires* to the registration of the first mentioned insurer under that name.

(2) If, through inadvertence or otherwise, an insurer is without such consent as aforesaid registered under a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or which is likely by reason of its resemblance to that name to mislead or deceive the public as to the identity of the insurer, the first mentioned insurer shall, if called upon to do so by the Registrar on the application of such other insurer, change his name within a time to be fixed by the Registrar:

Provided that nothing in this section shall apply to any insurer carrying on business before the commencement of this Act, under the Travancore Life Assurance Companies Act, 1112.

(3) No insurer who begins to carry on any insurance business after the commencement of this Act, shall adopt as its name and no insurer carrying on insurance business before the commencement of this Act shall continue after the expiry of one year from the commencement thereof to use as its name any combination of words which includes the word "provident."

Requirements as to capitals.

6. No individual or unincorporate body or company intending to commence life insurance business in Travancore whether solely or in common with any other business, after the commencement of this Act shall be registered unless the Registrar is satisfied that such individual or body or company has as working capital a net sum of not less than fifty thousand rupees exclusive of the deposit to be made before registration under sub-section (5) of section (7) of this Act, and exclusive in the case of a company of any sums payable as preliminary expenses incurred in the formation of the company.

7 (1) Every insurer or intending insurer shall, in respect of the insurance business carried on or to be carried on by him in Travancore, deposit and keep deposited with Our Accountant General for and on behalf of Our Government cash or approved securities estimated at the market value of the securities on the day of deposit, of the amount hereafter specified, namely:

Deposits.

(a) where the business is life insurance only, two hundred thousand rupees;

(b) where the business is fire insurance only, one hundred and fifty thousand rupees;

(c) where the bus'ness in marine insurance only, one hundred and fifty thousand rupees;

(d) where the business is accident and miscellaneous insurance (including employers' liability insurance, aircraft insurance, bond investment insurance and motor vehicle insurance) one hundred and fifty thousand rupees;

(e) where the business is life insurance together with any one of the three classes of insurance specified in clauses (b), (c) and (d), three hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;

(f) where the business is life insurance together with any two of the three classes of insurance specified in classes (b), (c) and (d), four hundred thousand rupees of which two hundred thousand rupees shall be the deposit for the life insurance business;

(g) where the business is life insurance together with all three classes of insurance specified in clauses (b), (c) and (d), four hundred and fifty thousand rupees of which two hundred thousand rupees shall be the deposit for the life insurance business;

(h) where the business does not include life insurance, but includes any two of the classes specified in clauses (b), (c) and (d), two hundred and fifty thousand rupees;

(i) where the business does not include life insurance, but includes all three classes specified in classes (b), (c) and (d), three hundred and fifty thousand rupees; and

(j) where the business is marine insurance relating only to vessels engaged in the coastwise trade or their cargo, ten thousand rupees only:

Provided that where the insurer is an underwriter's agent, such insurer shall be deemed to have complied with the provisions of this section as to the deposit, if in respect of the class or classes of insurance business transacted by him in Travancore under the standing contract entered into by him with the underwriter or underwriters for whom he acts as agent an amount equal to one and one half times the amount of the deposit specified for such class or classes of business in sub section (1) has been deposited and is kept deposited in the manner aforesaid by or on behalf of such underwriter or underwriters.

(2) In the case of an insurer domiciled, constituted or incorporated in Travancore or British India or the United Kingdom and carrying on any class of insurance business in Travancore before the commencement of this Act, the deposit referred to in sub-section (1) may be made in not more than seven instalments as follows:—

(a) The first instalment shall be not less than one fourths of the specified amount of the deposit and shall be paid before the application for registration is made;

(b) The second instalment shall be not less than one-sixth of the balance of the specified amount and shall be deposited within one year after the commencement of this act; and

(c) The subsequent instalments shall be not less than the minimum required as the second instalment and shall be deposited before the first day of January of each succeeding year:

Provided that in the case of insurers carrying on life insurance business only, the deposit may be made in not more than ten instalments, as follows:—

(i) The first instalment shall be not less than one fourth of the specified amount and shall be deposited before the application for registration is made;

(ii) The second instalment shall be not less than one-ninth of the balance of such amount and shall be deposited within one year after the date of the commencement of this Act; and

(iii) the subsequent instalment shall be not less than the minimum required for the second instalment and shall be deposited before the first day of January of each succeeding year.

(3) In the case of an individual or an unincorporate body or company, domiciled, constituted or incorporated as the case may be in any country other than Travancore, British India or the United Kingdom and carrying on any insurance business in Travancore before the commencement of this Act, the deposit required by sub-section (1) may be made in two instalments as follows:—

(a) The first instalment shall be not less than one-half of the specified amount and shall be deposited before the application for registration is made; and

(b) The second instalment shall be deposited before the expiry of one year from the date of registration.

(4) In the case of an individual or an unincorporate body or a company domiciled, constituted or incorporated as the case may be in Travancore, British India or the United Kingdom and intending to commence any class of insurance business in Travancore after the commencement of this Act, the deposit required by sub-section (1) may be made in instalments as follows:—

(a) the first instalment shall be of not less than one fourth of the specified amount and shall be deposited before the application for registration is made;

(b) the second instalment shall be not less than one third of the balance of such amount and shall be deposited before the expiry of one year from the commencement of business in Travancore,

(c) the third instalment shall be not less than one half of the balance of the amount outstanding thereafter and shall be deposited before the expiry of two years from the commencement of business in Travancore, and

(d) the entire balance then outstanding shall be deposited before the expiry of three years from the commencement of business in Travancore.

(5) In the case of an individual or an unincorporate body or a company domiciled, constituted or incorporated as the case may be in any country other than Travancore, British India, or the United Kingdom and intending to commence any class of insurance business in Travancore after the date of the commencement of this Act, the deposit required by sub-section (1) shall be made in full before the application for registration is made.

(6) No insurer who is liable under this section to deposit any instalment or part of the specified amount in respect of any class or classes of insurance business shall undertake any other class of insurance business until such instalment or part of the specified amount has been deposited in full and the additional deposit required by sub-section (1) in respect of such other class of business or so much of that deposit as is required by any of the provisions of sub sections (2), (3) and (4) to be made before the application for registration, has also been made in full.

(7) Securities already deposited with Our Accountant General in compliance with the Travancore Life Assurance Companies Act shall, to the extent of their market value on the date of the first deposit made in compliance with the Act be deemed to be deposited under this Act in respect of the Life Insurance business of the insurer.

(8) A deposit made in cash with Our Accountant General may carry interest at rates sanctioned by Our Government from time to time on such deposit and shall be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned; and any interest accruing due and collected on such deposits and on securities deposited under this section shall be paid to the insurer, subject in the case of securities only to deduction of the normal commission chargeable for the realisation of interest.

(9) An insurer may at any time substitute for securities lodged with Our Accountant General under this section other approved securities of equal value at the market rate prevailing at the time of substitution and Our Government shall, if so required by a depositor, invest in securities the whole or any part of a deposit made originally in cash or the whole or any part of cash received by the Accountant-General on sale of or on the maturing of securities lodged by the depositor.

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (1), unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

Reservation of deposits.

8. (1) The deposit made by an insurer under section 7 *or Section 98* shall be deemed to be part of the assets of the insurer but shall not be susceptible of any assignment or charge; nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilities remain undischarged; nor shall it be liable to attachment in execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way.

(2) Where a deposit is made in respect of life insurance business the deposit made in respect thereof shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer.

Refund of deposit.

9. Where an insurer has ceased to carry on in Travancore any class of insurance business in respect of which a deposit has been made under Section 7 *or Section 98* and his liabilities in Travancore in respect of business of that class have been satisfied or are otherwise provided for, the court may, on

the application of the insurer, order the return to the insurer of so much of the deposit as may not be required under Section 7 for the purpose of any other class of insurance, while he may con inue to carry on th reaf er.

10. (1) Where an insurer carries on business of more than one of the classes specified in clauses (a), (b), (c) and (d) of subsection (1) of Section 7, he shall keep a separate account of all receipts a d payments in respect of each such class of insurance bus ness.

Separation of accounts and funds.

(2) In the case of every insurer who carries on the business of life insurance whether solely or in addition to any other business, the excess of receipts over payments in respect of the life insur nce busi ess shall be carried to and shall form a separate fund to be called the life insurance fund and the deposit made by the insurer under Section 7 in respe t of such life insurance business shall be deemed to be part of such fu d.

(3) The life insura ce fund sh ll be as absolutely the security of the holder of life policies issued by the insu er as though it belonged t an insurer carrying on no other busin s than life insurance business and shall not e liable for any contracts of the insurer for which it would not have been liable had the business of the i surer been only that of life insur nce and shall not be applied dir tly or indirectly save as provided in Section 49 for any purposes other than those of the life insurance business carried on by that insurer.

11. (1. Every insurer domiciled or established or incorporated in Travancore in respect of all insurance business transacted by him, and in t e case of any other insurer in r spect of the insur nce business transacted b him in Travancore shall at the expiration of each calendar year prepare with reference to that year

Accounts and balance sheet.

(a) in accordance with the Acts contained in Part 1 of the first Schedule a balance she t in the form set forth in Part II of that Schedule ;

(b) in accordance with the a ts co taine in Part I of the Second Schedule, a profit and loss account and a profit and loss appropriation account in the f rms s t forth in Part II of that Sch dule, except where the insurer carries on business of one class only of the c asse specified in clauses (a), (b) and c) of sub section 1) or Section 7 and no other business ;

c) in respect of each class of insurance business carried on by him in accordance with the acts contained in Part I of the third Schedule a revenue account in the form or forms set forth in Part II of that Schedule applicable to that class of insurance busi ess

(2) The accounts and st tements referred to in sub-section (1) shall be signed—

(a) in the case of a company to which the Travancore Companies Act IX of 11 4, applies, by he officers or persons required by that Act to sign accounts and statements : —

(b) in the case of any other company by the chairman, if any and two direct rs and the principal officer of the company in Travancore ;

(c) in the case of an unincorporated body of two partners by members of such body ; and

d) in the case of an individual, by that individual or the person managing the business in Travancore on his behalf ;

And shall be accompanied by a statement containing the name and descriptions of each of the persons in charge of the management of the business during the periods to which such accounts and statements relate and by a report by such persons on the affairs of the business during that period.

(3) Where an insurer carrying on the business of insurance at the commencement of this Act has prepared the balance sheet and accounts required the balance-sheet and accounts required by the Travancore Companies, Act, IX of 1114, or has based his accounts upon the financial and not the calendar year, the provisions of this section shall, if Our Government so directs in any case apply until the 31st day of December of the year succeeding the year in which the Act comes into force, as if in sub-section (1) references to the calendar year were references to the financial year.

12 The balance sheet, profit and loss account, revenue account and profit and loss appropriation account prepared by each insurer under Section 11 shall, unless they are subject to audit under the Travancore Companies Act, IX of 1114, be audited annually by an auditor who shall in audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on auditors of companies by Section 183 of the Travancore Companies Act IX of 1114.

Acturial report and abstract

13. (1) Every insurer domiciled, established or incorporated in Travancore shall, in respect of all life insurance business transacted by him, and every other insurer shall, in respect of the life insurance business transacted by him in Travancore, once at least in every five years cause an investigation to be made by an actuary into the financial condition of the life insurance business including a valuation of his liabilities in respect thereto and shall cause an abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule,

(2) The provisions of sub-section (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public

(3) There shall be appended to every such abstract as is referred to in sub-section (1) or sub-section (2) a certificate signed by the insurer or a partner or the principal officer of the insurer, as the case may be, that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purposes of the investigation.

(4) There shall be appended to every such abstract a statement, in conformity with the requirements of Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule, of the life insurance business subsisting at the date to which the accounts of the insurer are made up for the purposes of such abstract:

Provided that, if the investigation referred to in sub-section (1) and (2) is caused to be made annually by any insurer, it shall be a sufficient compliance with the requirements of this sub-section if such statement is appended once at least in every five years.

(5) Where an investigation into the financial condition of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance sheet as at the date at which the investigation is made, shall be prepared and audited in the manner provided by this Act.

Register of policies and the register of claims

14. Every insurer domiciled, established or incorporated in Travancore in respect of all business transacted by him; and in the case of any insurer in respect of the insurance business transacted by him in Travancore shall keep and maintain –

(a) a register or record of policies, in which shall be entered, in respect of every policy issued by the insurer, the name and address of the policy-holder, the date when the policy was effected and particulars of any transfer, assignment or nomination of which the insurer has notice, and

(b) a register or record of claims in which shall be entered every claim presented to the insures together with the date of the claim, the name and the address of the claimant and the date on which the claim was discharged or, in the case of a claim which is rejected, the date of rejection and the grounds therefor.

Submission of returns

15. (1) Every insurer shall cause to be printed the audited Accounts and statements required by Section II and the abstract and statement required by Section 13 and shall furnish four copies thereof as returns to the Registrar within six months from the end of the period to which they relate.

Provided that the Registrar may extend the period allowed for furnishing printed copies of the abstract and statements referred to in Section 13 by a period not exceeding three months:

Provided further that in the case of insurers having their principal place of business or domicile outside Travancore and in the case of insurers domiciled, established or incorporated in Travancore but also carrying on business outside Travancore, the period allowed for furnishing such printed returns shall be nine months:

And provided also that Our Government may in any case extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months.

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in the case of an insurer being an individual, by the insurer himself.

(3) Where the insurer's principal place of business or domicile is outside Travancore he shall forward to the Registrar along with the documents referred to in Section II, the balance sheet profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled, or, where such documents are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period.

16. (1) Where, by the law of any country outside Travancore in which an insurer is domiciled or constituted or incorporated, the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents required to be furnished as returns in accordance with the provisions of Section 15, the provisions of sub-section (2) of the Section shall apply to such insurer in lieu of the provisions of Sections 11, 12, 13 and 15.

Returns by insurers established outside Travancore.

(2) Every insurer referred to in sub-section (1) shall within the time allowed by or under Section 15, furnish to the Registrar four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (2) of this Section, and in addition thereto, four certified copies in the English language of each of the following statements, namely :

(*a*) a statement audited by a person duly qualified under the law of the insurer's country showing the assets held by the insurer in Travancore :

(*b*) for each class of insurance business carried on by him, a revenue account and statements in the form or forms set forth in Part II of the Third Schedule as may be applicable to that class of business and similarly audited showing separately with respect to business transacted by the insurer in Travancore the details required to be supplied in such revenue account :

(*c*) an abstract of the valuation report in respect of all life insurance business transacted by the insurer in Travancore, prepared in the manner required by sub-section (1) of Section 13 ; and

(*d*) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly, whether from his principal office or from any other source outside Travancore, have been shown in the revenue account except such sums as properly appertain to the capital account.

17. Where a local insurance company in any year furnishes the balance sheet and accounts in accordance with the provisions of Section 15, the company may at the same time send to the Registrar of Companies copies of such balance sheet and accounts : and where such copy is so sent it shall not be necessary for the company to file the copies of the balance sheet and accounts with the Registrar as required by sub-section (1) of Section 170 of that Regulation and such copies so sent shall be dealt with in all respects as if they were filed in accordance with that section.

Exemption from certain provisions of the Travancore Companies Regulation 1114.

18. Every insurer shall furnish to the Registrar a certified copy of every report on the affairs of the concern which is submitted to the members, partners or policy-holders of the insurer, immediately after it is so submitted.

Furnishing reports.

19. Every local insurance company shall furnish to the Registrar an abstract of the proceedings of every general meeting within thirty days from the date of that meeting.

Abstract of proceedings of general meetings.

20. (1) Every return furnished to the Registrar of a certified copy thereof shall be kept by the Registrar and shall be open to inspection ; and any person may procure a copy of any such return or of any part thereof, on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied, any five figures being deemed for this purpose to be equivalent to one word.

Custody and inspection of documents and supply of copies

(2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of Section 15 or Section 16 shall on the application of any share holder or policy holder, made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in Travancore and in any other case within one month of such application.

(3) A copy of the Memorandum and Articles of Association of the insurer if a company, shall, on the application of any policy-holder be supplied to him by the insurer on payment of one rupee.

21. (1) If it appears to the Registrar that any return furnished to him under the provisions of this Regulation is inaccurate or defective in any respect ; he may—

Powers of Registrar regarding returns

(*a*) require from the insurer such further information, certified if he so directs by any auditor or actuary, as he may consider necessary, to correct or supplement such return ;

(*b*) call upon the insurer to submit for his examination at the principal place of business of the insurer in Travancore any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose ;

(*c*) examine any officer of the insurer on oath in relation to the return ;

(*d*) decline to accept any such return unless the inaccuracy has been corrected or the defect has been remedied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or the remedying of the defect was delivered to the insurer and if the Registrar delines to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 as the case may be relating to the furnishing to the returns.

(2) The Court may on the application of an insurer and after hearing the Registrar cancel any order made by the Registrar under clause (*a*), (*b*) or (*c*) of sub-section (1) or may direct the acceptance of any return which the Registrar has declined to accept, if the insurer satisfies the court that the action of the Registrar was in the circumstances unreasonable.

22. If it appears to the Registrar that an investigation or valuation made under section 13 does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, he may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation valuation to be made at the expense of the insurer by an actuary appointed by the insurer for that purpose and approved by the Registrar.

Power of Registrar to under revaluation.

23. (1) Every return furnished to the Registrar which has been certified by the Registrar to be a return so furnished, shall be deemed to be a return duly furnished to him.

Evidence of documents.

(2) Every document, purporting to be certified by the Registrar to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.

Summary of return to be published.

Our Government shall cause to be published in each year in such manner as they may direct, a summary of the accounts, balance-sheets, statements, abstracts and other returns furnished or purporting to be furnished under this Act to the Registrar for the year preceding the year of publication and may append to such summary any note of Our Government and any correspondence in relation thereto.

Returns to be published in statutory forms.

25. No insurer shall publish in Travancore any return in a form other than that in which it has been furnished to the Registrar:

Provided that nothing contained in this section shall prevent an insurer from publishing true and accurate abstract from such returns for the purposes of publicity.

Alterations in the particulars furnished with application for registration to be reported.

26. Whenever any alteration occurs or is made which affects any of the documents or particulars which under the provisions of sub-section (2) of section 3 accompained or were required to accompany the application, of any insurer for registration, the insurer shall forthwith furnish to the Registrar a full statement of such alteration.

Investment, Loans and Management.

Investment of assets and restriction on loans.

27. (1) Every insurer domiciled, consituted or incorporated in Travancore and carrying on life insurance business in Travancore shall, subject to the provisions of sub-section (4), at all times invest and hold invested assets equivalent to not less than fifty-five per cent. of the sum of the amount of his liabilities to holders of life insurance policies in Travancore on account of matured claims and of the amount required to meet the liability on policies of life insurance maturing for payment in Travancore less the amount of any deposit made under Section 7 or Section 98 by the insurer in respect of his life insurance business and less any amount due to the insurer for loans granted by him on policies of life insurance maturing for payment in Travancore and within their surrender value and the investment shall be made by the insurer in Government securities or other approved securities in such proportion as may from time to time be fixed by Our Goverament.

(2) The provisions of sub-section (1) shall apply also to insurers incorporated or domiciled in British India or the United Kingdom and carrying on life insurance business in Travancore.

(3) An insurer incorporated or domiciled elsewhere than in Travancore or British India or the United Kingdom and carrying on life insurance business in Travancore shall, subject to the provisions of sub section (4), at all times invest and hold invested assets equivalent to not less than the

sum of his liabilities to holders of life insurance policies in Travancore on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in Travancore, less the amount of any deposit made under Section 7 by the insurer in respect of his life insurance business and less any amount due to the insurer on loans granted by him on policies of life insurance in Government securities or other approved securities in such proportion as may from time to time be fixed by Our Government.

(4) Every insurer carryying on life insurance business in Travancore at the commencement or this Act and to whom any of the provisions of sub section (1) or sub-section (2) or sub section (3) apply shall before the expiry of four years from the commencement of this Regulation invest the total amount required to be invested by those sub-sections in the manner required thereby:

Provided that of such total amount the insurer shall have invested not less than one-fourth in securities of the nature specified in the aforesaid provision before the expiry of one year, not less than one-half before the expiry of two years, and not less than three fourths before the expiry of three years from the commencement of this Act.

(5) The assets required by this section to be held invested by an insurer to whom sub-section (2) or sub-section (3) applies shall be held in trust for the discharge of claims of the nature referred to in sub-section (3) and shall be vested in trustees resident in Travancore and approved by Our Government by an instrument of trust which shall be executed by the insurer and approved by Our Government and shall define the manner in which alone the subject matter of the trust shall be dealt with.

Statement of investments of assets

28. (1) Every insurer registered under this Act and carrying on the business of life insurance, shall twice in every year namely, within thirty one days of the 30th day of June and within thirty one days of the 31st day of December, submit to the Registrar a statement showing as at the said dates the assets held invested in accordance with section 27 and such statement shall be certified by the insurer or a principal officer in charge of the business of the insurer in Travancore.

(2) The Registrar shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets invested in compliance with Section 27 and the insurer shall comply with all requisitions made by the Registrar in that behalf.

Prohibition of loans.

29. No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, managing agent, actuary, auditor or officer of the insurer if a company, or where the insurer is a firm, to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent, actuary officer or partner:

Provided that nothing herein contained shall apply to loans made by an insurer to a banking company:

Provided further that every existing loan to any director, manager, managing agent, auditor, actuary, officer or partner notwithstanding any contract to the contrary, shall be repaid within one year from the commencement of this Act, and in case of default, such defaulting director,

manager, managing agent, auditor, actuary, officer or partner shall cease to hold office on the expiry of one year from the commencement of this Act.

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company.

30. If, by reason of a contravention of any of the provisions of Section 27 or Section 29, any loss is sustained by the insurer or by the policy-holders, every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss.

31. None of the assets in Travancore of any insurer shall, except in the case of deposits made with the Accountant General under Section 7 or Section 98 or in so far as assets are required to be vested in trustees by sub-section (5) of Section 27 be kept otherwise than in the name of a Public Officer approved by Our Government or in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual.

Limitation on employment of managing agents and on the remuneration payable to them.

32. (1) No insurer shall, after the commencement of this Act, appoint a managing agent for the conduct of his business.

(2) Where any insurer engaged in the business of insurance before the commencement of this Act employs a managing agent for the conduct of his business, then, notwithstanding anything to the contrary contained in any agreement entered into by the insurer and where the insurer is a company, notwithstanding anything to the contrary contained in the Travancore Companies Act IX of 1114, or in the articles of association of that company such managing agent shall cease to hold office on the expiry of three years from the commencement of this Act, and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent.

(3 After the commencement of this Act, notwithstanding anything to the contrary contained in any agreement entered into by an insurer and where the insurer is a company notwithstanding anything to the contrary contained in the Travancore Companies Act, IX of 1114 or in the articles of association of the company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousad rupees per month in all including salary and commission and other remuneration payable to and receivable by him, for his services as managing agent.

Inspection.

Power of Registrar to order inspection.

33. (1) If the Registrar has reason to believe that the interests of the policy-holders of an insurer are in danger or that an insurer is unable to meet his obligations or has made default in complying with any of the provisions of this Act or that an offence under this Act has been or is likely to be committed by an insurer or any officer of an insurer or if he receives a requisition in this behalf signed by share holders of an insurer

being a company not less in number than one-tenth of the whole body of share-holders and holding not less than one tenth of the whole share capital or if he receives a requisition in this behalf signed by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees and supported by an affidavit, he may after giving notice to the insurer and giving him an opportunity to be heard, appoint an auditor or actuary or both, not being an auditor or actuary in the employ of the insurer, or may himself make such investigation.

(2) The Court may, on the application of an insurer and after giving notice to and hearing the Registrar, forbid such action by the Registrar, if the insurer satisfies the Court that it is unnecessary in the circumstances.

(3) The results of any investigation made under this section shall be embodied in a report of which one copy shall be lodged with the Registrar and one copy shall be furnished to the insurer and a copy of such report shall be furnished to any policy-holders who have sent a requisition for such investigation.

(4) The Registrar may require the insurer to comply within a time to be specified by him (not being less than fifteen days from the receipt of the notice by the insurer) with any directions he may issue to remedy defects disclosed by such inspection.

(5) If as a result of any investigation made under this section, the Registrar is of opinion that it is necessary in the interests of the policy-holders that the business of the insurer should be wound up, or if the insurer fails to comply with any directions issued under sub-section (4), the Registrar may, after giving notice to the insurer and giving him an opportunity to be heard, apply to the Court to have the business of the insurer wound up.

Powers of investigator.

34. When any investigation is made in pursuance of Section 33, the provisions of Section 177 of the Travancore Companies Act IX of 1114 shall apply for the purposes of such investigation as they apply to an investigation made in pursuance of Section 175 of that Act and all expenses of and incidental to such investigation shall be defrayed by the insurer.

Amalgamation and Transfer of Insurance Business.

Amalgamation and transfer of insurance business.

35. (1) No life insurance business of an insurer domiciled or established or incorporated in Travancore shall be transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and sanctioned by the Court having jurisdiction over one or other of the insurers concerned.

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme.

(3) Before an application is made to the Court to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor shall, at least two months before the application

is made, be sent to Our Government and certified copies of the following documents shall be furnished to Our Government and shall during the two months aforesaid be kept open for the inspection of the members and policy holders at the principal and branch offices and chief agencies of the insurer concerned, namely :—

(a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer :

(b) statements of the assets and liabilities of the insurers concerned in such amalgamation or transfer ; and

(c) the actuarial or other reports on which the scheme was founded including a report by an independent actuary on the proposed amalgamation or transfer.

(4) Where an application under sub-section (3) is made to the Court within three months from the commencement of this Act, the Court may, on application extend for the insurer whose business is to be transferred to or amalgamated with the business of another insurer, the time allowed for registration under Section 3 and for the payment of the first instalment of the deposit under Section 7 or Section 98 for such period not exceeding nine months as the Court may think fit.

Sanction of amalgamation and transfer by Court.

36. When any application such as is referred to in sub-section (3) of Section 35 is made to the Court, the court shall cause, if for special reasons it so directs, notice of the application to be sent to every person resident in Travancore who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as it may direct and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom it considers entitled to be heard, may sanction the arrangement, if it is satisfied that no sufficient objection to the arrangement has been established.

Statements required after amalgamation and transfer.

37. Where an amalgamation takes place between any two or more insurers, or where any business of one insurer is transferred to another, the insurer carrying on the amalgamated business or the insurer to whom the business is transferred, as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer furnish to Our Government,

(a) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected, and

(b) a declaration signed by every insurer concerned or in the case of a company by the chairman and the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer, and

(c) where the amalgamation or transfer has not been made in accordance with a scheme confirmed by the Court :—

(i) certified copies of statements of the assets and liabilities of the insurers concerned, and

(ii) certified copies of the actuarial or other reports upon which the agreement or deed was founded.

Assignment or Transfer of Policies and Nominations.

38. (1) A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferer or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

Assignment and transfer of life insurance policies.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except where the transfer or assignment is in favour of the insurer shall not be operative as against an insurer and shall not confer upon the transferee or assignee or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment together with either the said endorsement or the instrument itself or a copy thereof certified to be correct by or on behalf of both the transferer and the transferee or their duly authorised agents has been delivered to the insurer.

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy; and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notice referred to in sub-section (2) are delivered.

(4 Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgment of the receipt of such notice; and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of notice referred to in sub-section (2), recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy and such person shall be subject to all liabilities and equities to which the transferer or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferer or assignor or making him a party to such proceedings.

(6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section.

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the life time of the person whose life is insured, and an assignment in favour of the survivor or survivors of a number of persons, shall be valid.

39. (1) The holder of a policy of life insurance not being an absolute assignee of the benefits under the policy may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

Nomination by policy-holder.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be but unless notice in writing of any such cancellation or change has been delivered to the insurer the insurer shall not be liable for any payment under the policy made bona-fide by him to a nominee mentioned in the text of the policy or registered in his records.

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or cancellation or a change thereof and may charge a fee not exceeding one rupee for registering such cancellation or change.

(4) A transfer or assignment of a policy made in accordance with Section 38 shall, automatically cancel a nomination.

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the Policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the policy-holder, the amount secured by the policy shall be payable to such survivor or survivors.

Commission and Rebates and Licensing of Agents.

40. (1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in Travancore to any person except an insurance agent or a person acting on behalf of an insurer who for the purposes of insurance business employs insurance agents.

Prohibition of payment by way of commission or otherwise for procuring business.

(2) No insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium or, in the case of business of any other class, fifteen per cent. of the premium :

Provided that an insurer may, in respect of life insurance business only, pay to insurance agents during the first ten years of his business fifty five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums,

(3) Nothing in this section shall prevent the payment under any contract existing prior to the date of commencement of this Act, of gratuities or renewal commission to any person whether an insurance agent or not under the provisions of this Act or to his representative after his decease in respect of insurance business effected through him before the said date.

Prohibition of rebates.

41. (1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to effect or renew an insurance in respect of any kind of risk relating to lives or property in Travancore, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectus or tables of the insurer.

(2) Any person contravening the provisions of this section shall be punishable with fine which may extend to one hundred rupees, unless the default is made by a person effecting or renewing a policy, in which case he shall be punishable with fine which may extend to fifty rupees only.

Licensing of insurance agents.

42. (1) The Registrar or an officer authorised by him in this behalf shall in the prescribed manner and on payment of the prescribed fee which shall not be more than five rupees, issue to any individual making an application under this section and not suffering from any of the disqualifications hereinafter mentioned a license to act as an insurance agent for the purpose of soliciting or procuring insurance business.

(2) A license issued under this section shall entitle the holder to act as an insurance agent for any registered insurer.

(3) A license issued under this section shall expire on the 31st day of March in each year, but shall, if the applicant does not suffer from any of the disqualifications hereinafter mentioned, be renewed from year to year on payment of a fee of one rupee.

(4) The disqualifications above referred to shall be the following—

(a) that the person is a minor ;

(b) that he is found to be of unsound mind by a Court of competent jurisdiction ;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating by a Court of competent jurisdiction ;

(d) that in the course of any judicial proceedings relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an assured.

(5) If it be found that an insurance agent suffers from any of the foregoing disqualifications, the Registrar shall, and if the agent has knowingly contravened any provision of this Act may, cancel the license issued to the agent under this section without prejudice to any other penalty to which such agent may be liable.

Register of insurance agent.

43. (1) Every insurer and every person who acting on behalf of an insurer employs licensed insurance agents shall maintain a register showing the name and address of every licensed insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

(2) Any individual not holding a license issued under Section 42 who acts as an insurance agent shall be punishable with fine which may extend to fifty rupees and any insurer who or any person acting on behalf of an insurer who, appoints as an insurance agent any individual not so licensed, or transacts any insurance business in Travancore through any such individual, shall be punishable with fine which may extend to one hundred rupees.

(3) The provisions of sub-section (2) shall not take effect until the expiry of six months from the commencement of this Act.

Prohibition of cessation of payments of commission.

44. Notwithstanding anything contained in any contract between any insurer and an insurance agent licensed under Section 42 as to the forfeiture of commission on renewal premiums or the cessation of payment of such commission to such insurance agent, no insurer shall in respect of life insurance business done in Travancore refuse payment to an insurance agent of commission on renewal premiums due to him under the agreement by reason only of the termination of his agreement on any ground other than fraud if such agent has served such insurer contiuually and exclusively for at least ten years, and after his ceasing to act as agent, he does not directly or indirectly solicit or procure insurance business for any other insurer.

Special provisions of Law.

Policy not to be called in question on ground of mis-statement after two years.

45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of such commencement and no policy of life insurance effected after the commencement of this Act, shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee or friend or the insured, or in any other document leading to the issue of the policy, was inaccurate of false, unless the insurer shows that such statement was on a material matter and was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false.

Application of Travancore Law to policies issued in Travancore.

46. The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in Travancore after the commencement of this Act shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, to receive payment in Travancore of any sum secured thereby and to sue for any relief in respect of the policy in any Court of competent jurisdiction in Travancore; and if the suit is brought in Travancore any question of law arising in connection with any such policy shall be determined according to the law in force in Travancore.

Payment of money into court.

47. (1) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount, the insurer shall before the expiry of nine months from the date of the maturing of the policy or where the circumstances are such that the insurer cannot be immediately aware of such maturing, from the date on which notice of such maturing is given to the

insurer apply to the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise for permission to pay the amount into Court.

(2) A receipt granted by the Court for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount.

(3) An application for permission to make a payment into Court under this section shall be made by a petition verified by an affidavit signed by the insurer or the principal officer of the insurer setting forth the following particulars, namely—

(a) the name of the insured person and his address ;

(b) if the insured person is deceased, the date and place of his death ;

(c) the nature of the policy and the amount secured by it ;

(d) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received;

(*e*) the reasons why in the opinion of the insurer a satisfactory discharge cannot be obtained for the payment of the amount : and

(*f*) the address at which the insurer may be served with notice of any proceedings relating to disposal of the amount paid into Court.

(4) An application under this section shall not be entertained by the Court if the application is made before the expiry of six months from the maturing of the policy by survival or from the date of receipt of notice by the insurer of the death of the insured as the case may be.

(5) If it appears to the Court that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be paid into Court.

(6) The insurer shall transmit to the Court every notice of claim received after the making of the application under sub-section (3), and any payment required by the Court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into Court shall as to the costs of the application under sub-section (3) be borne by the insurer and as to any other costs be in the discretion of the Court.

(7) The court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into Court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claiment.

(8) The Court shall decide all questions relating to the disposal of claims to the amount paid into Court.

Directors of insurers being companies.

48. (1) Where the insurer is a company incorporated under the Travancore companies Act of IX of 1114, or the Travancore Companies Act of 1092 and carries on the business of life insurance not less than one fourth of the whole number of the Directors of the company shall be persons having the prescribed qualifications and holding policies of life insurance issued by the company, and shall be elected to the Board of Directors of the company in the prescribed manner by the holders of policies of life insurance issued by the company.

(2) This section shall not take effect until the expiry of one year from the commencement of this Act.

49. No insurer, domiciled, established or incorporated in Travancore and carrying on the business of life insurance shall in respect of such life insurance business declare or pay any dividend to share-holders or any bonus to policy-holders except out of a surplus ascertained as the result of an actuarial valuation of the assets and liabilities of the insurer.

Notice of options available to the assured on the lapsing of a policy.

50. An insurer shall before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid give notice to the policy-holder informing him of the options available to him.

Supply of copies of proposals and medical reports.

51. Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith.

Prohibition of business on dividing principle

52. No insurer shall after the commencement of this Act begin, or after three years from that date continue to carry on, any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time limits:

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise:

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withold from distribution a sum of not less than forty per cent of the premiums received during each year after the commencement of this Act in which such business is continued so as to make up the amount required for investment under Section 27.

Winding up by the Court.

53 (1) The Court may order the winding up in accordance with the Companies Act IX of 1114, of any insurance company and the provisions of that Act shall, subject to the provisions of this Chapter, apply accordingly

(2) In addition to the grounds on which such an order may be based the Court may order the winding up of an insurance company,—

(*a*) if with the sanction of the Court previously obtained a petition in this behalf is presented by share-holders not less in number than one-tenth of the whole body of share-holders and holding not less than one-tenth of the whole share capital or by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees; or

(*b*) if the Registrar, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely: –

(i) that the company has failed to deposit or to keep deposited with Our Accountant General the amounts required by Section 7 or Section 98,

(ii) that the company having failed to comply with any requirement of this Act has continued such failure for a period of three months after notice of such failure has been conveyed to the company by the Registrar.

(iii) that it appears from the returns furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is insolvent, or

(iv) that the continuance of the company is prejudicial to the interests of the policy-holders.

Voluntary winding up.

54. Notwithstanding anything contained in the Travancore Companies' Act IX of 1114, an insurance company shall not be wound up voluntarily except for the purpose of effecting an amalgamation or a reconstruction of the company, or on the ground that by reason of its liabilities it cannot continue its business.

Valuation of liabilities.

55. (1) In the winding up of an insurance company or in the insolvency of any other insurer the value of the assets and the liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator or receiver in insolvency thinks fit, subject, so far as applicable, to the rule contained in the Sixth Schedule and to any directions which may be given by the Court.

(2) For the purposes of any reduction by the Court of the amount of the contracts of any insurance company the value of assets and liabilities of the company and all claims in respect of policies issued by it shall be ascertained in such manner and upon such basis as the Court thinks proper having regard to the rule aforesaid.

(3) The rules in the Sixth Schedule shall be of the same force and may be repealed, altered or amended as if it were a rule made in pursuance of Section 304 of the Travancore Companies Act IX of 1114, and rules may be made under that section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies.

Application of surplus assets of life insurance fund in liquidation or insolvency.

56. (1) In the winding up of an insurance company and in the insolvency any of other insurer the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life insurance business.

(2) In the winding up of an insurance company carrying on the business of life insurance or in insolvency of any other insurer carrying on such business where any proportion of the profits of the insurer was before the commencement of the winding up or insolvency allocated to policy-holders, if, when the assets and liabilities of the insurer have been ascertained, there is found to be a surplus of assets over liabilities (hereinafter referred to as *prima facie* surplus) there shall be added to the liabilities of the insurer in respect of the life insurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to share-holders and policy-holders as was

allocated to policy-holders during the ten years immediately preceding the commencement of the winding up and the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition :

Provided that—

(*a*) if in any case there has been no such allocation or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the insurer in respect of the life insuarence business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct, and

(*b*) for the purpose of the application of this sub-section to any case where before the commencement of the winding up or insolvency a proportion of such profits as aforesaid of a branch only of the life insurance business in question has been allocated to policy-holders, the value of the assets and liabilities of the insurer in respect of that branch shall be separately ascertained in like manner as the value of his assets and liabilities in respect of the life insurance business was ascertained, and the surplus so found, if any, of assets over liabilities shall for the purpose of determining the amount to be added to the liabilities of the insurer in respect of the life insurance business be deemed to be the *prima facie* surplus.

Winding up of secondary Companies.

57 (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Courts shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company.

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of winding up of the secondary company.

(3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company or as near thereto as circumstances admit.

(4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary, the Court shall not direct the secondary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any secondary company in conjunction with the principal company by any creditor of, or person interested in, the principal or secondary company.

(6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section.

Scheme for partial winding up of insurance companies.

58. (1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act.

(2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding up), for any future rights of every class of policy-holders in respect of their policies and for the manner of winding up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.

(3) The provisions of this *Act* relating to the valuation of liabilities of insurers in liquidation and insolvency and the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and any scheme under this section may apply with the necessary modifications any of the provisions of the Travancore Companies Act IX of 1114, relating to the winding up of companies.

(4) An order of the Court confirming a scheme under this section whereby the memorandum of a company is altered with respect to its object shall as respects the alteration have effect as if it were an order confirmed under Section 12 of the Travancore Companies Act IX of 1114, and the provisions of Sections 15 and 16 of that Act shall apply accordingly.

Return of deposits.

59. In the winding up of an insurance company and in the insolvency of any other insurer the liquidator or the assignee as the case may be, shall apply to the Court for an order for the return of the deposit made by the company or the insurer as the case may be under Section 7 or Section 98 and the Court shall on such application order a return of the deposit on such terms and conditions as it shall direct.

Notice of policy values.

60. In the winding up of an insurance company for the purposes of cash distribution of the assets and in the insolvency of any other insurer the liquidator or assignee as the case may be in the case of all persons appearing by the books of the company or other insurer to be entitled to or interested in the policies granted by the company or other insurer shall ascertain the

value of the liability of the company or other insurer to each such person and shall give notice of such value of those persons in such manner as the Court may direct and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intension to dispute such value in such manner and within such time as may be specified by a rule or order of the Court.

Power of Court to reduce contracts of insurance.

61 (1) Where an insurance company is in liquidation or any other insurer is insolvent the Court may make an order reducing the amount of the insurance contracts of the company or other insurer upon such terms and subject to such conditions as the Court thinks just.

(2) Where a company carrying on the business of life insurance has been proved to be insolvent, the Court may if it thinks fit in place of making a winding up order reduce the amount of the insurance contract of the company upon such terms and subject to such conditions as the Court thinks fit.

(3) Application for an order under this section may be made either by the liquidator or by or on behalf of the company or by a policy-holder, or by the Registrar and the Registrar and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application.

Power of Government to impose reciprocal disabilities on foreign companies.

62. Where by the law or practice of any country outside Travancore in which an insurer carrying on insurance business in Travancore is constituted, incorporated or domiciled, insurance companies incorporated in Travancore are required as a condition of carrying on insurance business in that country to comply with any special requirement whether as to the keeping of deposits or assets in that country, or otherwise which is not imposed on an insurer of that country under this Act Our Government may, if satisfied of the existence of such special requirement, by notification in Our Government Gazette direct that the same requirement or requirements as similar thereto as may be shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in Travancore.

SPECIAL PROVISION RELATING TO EXTERNAL COMPANIES.

Particulars to be filed by insurers established outside Travancore.

63. Every insurer, having his principal place of business or domicle outside Travancore, who establishes a place of business within Travancore, or appoints a representative or other agent in Travancore with the object of obtaining insurance business, shall, within three months from the establishment of such place of business or the appointment of such representative file with the Registrar —

(*a*) a certified copy of the charter, statute, deed of settlement or memorandum and articles of association or other instrument constituting or defining the constitution of the insurer, and, if the instrument is not written in the English language, a certified translation thereof,

(*b*) a list of the directors, if the insurer is a company,

(*c*) the name and address of some one or more persons resident in Travancore authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer, together with a copy of the power of atterney granted to him,

(d) the full address of the principal office of the insurer in Travancore,

(e) a statement of the classes of insurance business to be carried on by the insurer, and

(f) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in Section 62 imposed in the country of orign of the insurer on nationals of Travancore, and in the event of any alteration being made in the address of the principal office or in the classes of business to be carried on, in any instrument here referred to, or in the name of any of the persons here referred to, the company shall forthwith furnish to the Registrar particulars of such alteration.

Book to be kept by insurers established outside Travancore.

64. Every insurer having his principal place of business or domicile outside Travancore shall keep at his principal office in Travancore such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Registrar in respect of the insurance business transacted by him in Travancore to be compiled and if necessary, checked by the Registrar.

PART III.

Provident Societies.

Definition of provident society.

65. In this Part "provident society" means a person who, or a body of persons whether corporate or un-incorporate which, receive premiums or contributions for securing annuities on human life or receive premiums or contributions for insuring money to be paid on the happening of any of the following contingencies, namely :—

(a) the birth, marriage or death of any person or the survival by a person of a stated age or contingency;

(b) failure of issue;

(c) the occurrence of a social, religious or other ceremonial occasion;

(d) loss of or retirement from employment;

(e) disablement in consequence of sickness or accident,

(f) the necessity of providing for the education of a dependant; and

(g) any other contingency which may be prescribed or, which may be authorised by Our Government.

Application of this Part.

66. Nothing in this Part shall apply to a provident society which pays or undertakes to pay on any policy of insurance an annuity exceeding fify rupees or a gross sum exceeding five hundred rupees exclusive of any profit or bonus:

Provided that for the purposes of this section contracts entered into before the commencement of this Act shall not be taken into consideration and provided further that "policy" includes a series of policies covering one or more of the contingencies specified in Section 65.

Name.

67. No provident society established after the commencement of this Act, shall adopt as its name, and no Provident society established before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name, any combination of words which fails to include the word "provident" or which includes the word "life."

68. No provident society shall receive any premium or contribution for insuring money to be paid to any person other than the person paying such premium or contribution or the wife, husband, child, grand child, parent, brother or sister, nephew or niece of such person.

Insurable interest.

69. (1) No provident society shall carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution, amongst policies maturing for payment within certain time limits, of certain sums.

Dividing business.

(2) The Registrar shall, as soon as possible, take steps to have any provident society which carries on business on the dividing principle wound up:

Provided that where any such provident society carrying on business at the commencement of this Act, under the provisions of the Travancore Provident Insurance Societies Act of 1108 as amended by the Travancore Provident Insurance Societies Amendment Act of 1110, applies within three months of such commencement to the Registrar for permission to continue to carry on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act the Registrar shall permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so however that no new business on the dividing principle is undertaken by the society.

70. (1) No provident society except a provident society reigstered under the provisions of the Provident Insurance Societies Act of 1108, as amended by the Travancore Provident Insurance Societies Amendment Act 1110, shall receive any premium or contribution until it has obtained from the Registrar a certificate of registration.

Registration.

(2) Every application for registration shall be accompanied by—

(*a*) a certified copy of the rules of the society and where the society is a company incorporated under the Travancore Companies Act, IX of 1114 or under the Travancore Companies Act 1092, a certified copy of the Memorandum and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society.

(*b*) the names and addresses of the proprietors, or directors, and the managers of the society ;

(*e*) a certificate from Our Accountant-General that the initial deposit referred to in Section 73 has been made ;

(*d*) a declaration verified by an affidavit that the minimum working capital required by Section 72 is available; and

(*e*) the fee of the registration not exceeding rupees seventy-five as my be prescribed;

(3) The Registrar may refuse te issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the minium working capital required by Section 72 is available, but if he is so satisfied he shall register the society and its rules and issue to the society a certificate of registration thereof.

(4) The Registrar may after giving previous notice in writing in such manner as he thinks fit specifying the grounds for the proposed cancellation, and allowing the society concerned an opportunity of being heard, apply to the Court and obtain sanction for cancellation of the registration made under this section or made under the provisions of the Travancore Provident Insurance Societies Act of 1108,

(*a*) if he is satisfied as the result of an inquiry made under Section 87—

(i) that society is insolvent or is likely to become so, or

(ii) that the business of the society is conducted fraudulently or not in accordance with the rules thereof, or that it is in the interests of the policy-holders that the society should cease to carry on business,

(*b*) if the initial deposit or any of the further deposits required by Section 73 has not been made, or

(*c*) if the society, having failed to comply with any requirement of this Act, has continued such failure for a period of one month after notice, of such failure has been conveyed to the society by the Registrar:

Provided that the Registrar may, if he thinks fit, instead of applying for cancellation of the registration under sub-clause (i) of clause (*a*) of this sub-section make a recommendation to the Court that the contracts of the society should be reduced in such manner, and subject to such conditions as he may indicate.

(5) No proceeding taken and no order passed under Section 83 in respect of a society registered under the Travancore Provident Insurance Societies Act of 1108 shall be construed as tantamount to insolvency of the society for purposes of this section.

71. The provisions of Section 32 shall apply to provident societies as they apply to insurers.

Prohibition of managing agents.

72. No provident society established after the commencement of this Act shall be registered unless it has a paid up capital sufficient to provide as working capital a net sum of not less than five thousand rupees exclusive of deposits made under this Act and exclusive in the case of a company of any expenses incurred in connection with the formation of the company.

Working capital

Deposit.

73. (1) Every provident society shall, if established after the commencemet of this Act before the society applies for registration under Section 70 deposit and keep deposited with Our Accountant General for and on behalf of Our Government, cash or approved securities amounting at the market value of the securities on the date of deposit to five thousand rupees, and shall thereafter make in each calendar year a further deposit amounting to not less than fifteen per cent. of the gross premium income for the preceding calendar year including admission fees and other fees received by the society, until the total amount so deposited and kept is twenty-five thousand rupees.

(2) Deposits made under Section 4 of the Travancore Provident Insurance Societies Act of 1108 as amended by the Provident Insurance Societies Amendment Act of 1110, shall be deemed to be deposited under the provisions of this section.

(3) The provisions of sub-sections (8), (9) and (10) of Section 7 and of sub-section (1) of Section 8 shall apply to the deposits made under this section as they apply to deposits made by an insurer.

74. (1) Every provident society established after the commencement of this Act shall in its rules set forth –

Rules.

(*a*) the name, the object and the location of the registered office of the society,

(*b*) the contingencies or classes of contingencies on the happening of which money is to be paid,

(*c*) the conditions to be complied with before, and the payments to, be made on, admission to the society,

(*d*) the rates of premium or contribution, and the periods for which or the times at which premiums or contributions are payable.

(*e*) the maxim amount payable to a subscriber or policy-holder,

(*f*) the nature and amounts of the benefits provided for by the society,

(*g*) the circumstances in which a bonus may be paid to a policy-holder,

(*h*) the nature of the evidence required for the proof of the happening of any contingency on which money is to be paid,

(*i*) the circumstances i which policies may be forfeited or renewed or the whole or a part of the premium paid on a policy may be returned, or a surrender value of a policy may be granted,

(*j*) the penalties for delay in paying or failure to pay premiums or contributions,

(*k*) the proportion of the annual income of the society which may be disbursed on and the provisions to be made for meeting the expenses of the management of the society,

(*l*) the person or persons who or the authority which shall have power to invest the funds of the society,

(*m*) the provisions for appointment of auditors and their remuneration,

(*n*) the procedure to be adopted in altering the rules of the society,

(*o*) unless these are provided for in the articles of Association of a society which is a company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act of 1092.

(i) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society,

(ii) the manner of raising additional capital, and

(iii) the provisions for the holding of general meetings of the members and policy-holders and for the powers to be exercised and the procedure to be followed thereat, and

(*p*) such other matters as may be prescribed.

(2) Where the rules of any provident society registered under the Travancore Provident Insurance Societies Act of 1108 fail to comply with the provisions of this section the society shall, before the expiry of twelve months from the commencement of this Act amend the rules so as to comply with these provisions.

75. (1) No amendment of any rules of a provident society shall be valid until it has been sent to the Registrar and has been registered by him.

Amendment of rules.

(2) The registrar on being satisfied that the proposed amendment is not contrary to the provisions of this Act shall, unless he is of opinion that the amendment unfairly affects the rights of existing members or policy-holders of the society, issue to the society an acknowledgment of the registration of the amended rule.

Supply of copy of rules.

76. Every provident society shall on demand deliver free of cost to any member of the society a copy of the rules of the society, and to any person other than a member a copy of such rules on the payment of a sum not exceeding one rupee.

Registered office.

77. Every provident society shall have an office (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all communications and notices may be addressed, and shall give notice to the Registrar of any change in the location there of twenty-eight days of its occurrence.

Publication of authorised capital to contain also subscribed and paid up capital.

78. Where any notice, advertisement or other official publication of at provident society contains a statement of the amount of the authorised capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Registers and books.

79. Every provident society shall keep at its registered office—

(a) a register of members in which shall be entered the name address and occupation, if any, of every proprietor director, manager or secretary and of every member and of the society,

(b) a register or record of policies in which shall be entered in respect of every policy issued by the society, the name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the society has notice ;

(c) a register of claims in which shall be entered every claim made, together with the date of the claim, the name and address of the claimant and the date on which the claim is discharged or in the case of a claim which is rejected the date of rejection and the grounds therefor ;

(d) a register of agents in which shall be entered the name and address of every agent employed by the society ;

(e) a cash book in which shall be entered separately for each class of contingency separately specified in Section 65 all sums received and expended by the society and the matters in respect of which the receipt or expenditure takes place ;

(f) a ledger; and

(g) a journal.

Revenue account, balance-sheet and annual statements.

80. (1) Every provident society shall at the expiry of the calendar year prepare a revenue account and balance-sheet in the prescribed from verified in the prescribed manner, together with a report on the general state of the society's affairs and shall cause the revenue account and balance-sheet to be audited by an auditor, and the auditor shall so for as may be in the audit of a provident society have the powers of, exercise the

functions vested in, and discharge the duties and be subject to be liabilities imposed on, an auditor of companies by Section 1?3 of the Travancore Companies Act IX of 1114.

(2) Every provident society shall at the expiry of the calendar year prepare with respect to that year—

(a) a statement showing separately for each class of contingency separately specified in Saction 65,

(i) the number of new policies effected, the total amount insured thereby and the total premium income received in respect thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and

(ii) the total amount of claims made and the total amount paid in satisfaction thereof,

(b) a statement showing details of every insurance effected on a life other than the life of the person insuring, and

(c) a statement showing the total amount paid as allowances to agents and canvassers.

(3) Until the expiry of two years from the commencement of this Act this section shall apply to provident societies registered before the commencement of this Act under the Provident Insurance Societies Act of 1108, as if the reference to the calendar year were a reference to either the financial year or the calendar year.

Acturial report and abstract.

81. (1) Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made into its financial condition including the valuation of its liabilities and assets by an actuary.

(2) the report of the actuary shall contain an abstract in which shall be stated—

(a) the general principles adopted in the valuation including the method by which the valuation age of lives was ascertained,

(b) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation,

(c) the reserve values held against policies effected,

(d) the rate of interest assumed, and

(e) the provision made for expenses and shall have appended to it a certificate signed by a principal officer of the society that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation.

(3) If the actuary finds that the financial condition of the society is such that no surplus exists for distribution as bonus to the policy-holders or as dividend to the share-holders, he shall state in his report whether in his opinion the society is insolvent and, if so, whether it should be wound up or not and the extent to which in his opinion existing contracts would be modified or existing rates of premium should be adjusted to make good the deficiency in the assets

82. (1) The revenue account and balance-sheet with the auditor's report thereon and the report on the general state of the society's affairs referred to in sub-section (1) of Section 80 and the statements referred to in sub-section (2) of Section 80, shall be furnished as returns to the Registrar within three months from the end of the period to which they relate and copies of the revenue account and balance-sheet and the auditor's report thereon and of the report on the general state of the society's affairs shall, on the application of any member or policy-holder made within two years from the date on which the document was so furnished, be sent to him within fourteen days from the receipt of the application on payment of a fee of one rupee.

Submission of returns to Registrar.

(2) All the materials necessary for the proper valuation of the liabilities of the society under the provision of Section 81 shall be placed at the disposal of the actury within three months from the end of the period to which such material relates, and the report and abstract referred to in Section 81 shall be furnished as a return to the Registrar within a further period of three months.

(3) The provisions of Section 17 shall apply to the accounts and balance-sheet of a provident society being a company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act of 1092 as they apply to the accounts and balance-sheet of an insurar.

83. (1) Every provident society, established after the commencement of this Act shall cause every scheme of insurance which it proposes to put into operation, and every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act of 1108, shall cause any new scheme which it proposes to put into operation after such commencement to be examined by an actuary, and shall not receive any premium or contribution in connection with the scheme until the actuary has certified that the scheme is sound and such certificate has been forwarded to the Registrar.

Actuarial examination of Schemes.

(2) The provisions of sub-section (1) shall apply to any alteration of a scheme under sub-section (1) already in operation, but the Registrar may if he is of opinion that the alteration unfairly affects the interest of existing policy-holders, prohibit the alteration and, if he does so, the society shall not put the altered scheme into operation unless it first discharges to the satisfaction of the Regirtrar all its liabilities to those of the existing policy-holders who dissent from the alteration.

(3) Every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act of 1108, shall, as soon as may be and in any event before the expiry of six months from the commencement of this Act, submit all schemes of insurance other than those permitted to be carried on under the proviso to sub-section (2) of Section 69 which the society has in operation at the commencement to this Act, to examination by an actuary and shall send the report of the actuary thereon to the Registrar.

(4) The report of the actuary shall state in respect of each scheme whether it is actuarially sound and if not sound what alterations should be made to make it actuarially sound, and, where no actuarial report such as is referred to in Section 81 has been made within the two years preceding the examination, the report shall also state whether the assets of the society are sufficient to meet its liabilities under the existing schemes, and, if not,

how, in the opinion of the actuary the existing contracts should be modified, such modification being based on the principle that the fund of each scheme shall be apportioned equitably amongst the policy-holders of that scheme.

(5) The Registrar shall after due consideration of the report issue orders,—

(*a*) where a scheme is reported to be actuarially sound that such scheme be continued:

(*b*) where a scheme is reported to be actually unsound—

(i) if the assets of this society are found to be sufficient to meet the liabilities under the existing scheme that the altered scheme proposed by the actuary be adopted:

(ii) if the assets of the society are found to be insufficient to meet the liabilities under the existing scheme, that the existing contracts be modified as reported by the actuary or in any other equitable manner which the Registrar may deem fit to determine.

(6) (*a*) Every provident society permitted to carry on business under the proviso to sub-section (2) of Section 69, shall as soon as may be and in any event before the expiry of one and one-half of an year from the commencement of this Act submit a full account of its assets and liabilities and the actual amount contributed on account of each policy kept alive on that date, to examination by an actuary and shall send the report of the actuary thereon to the Registrar.

(*b*) The report of the actuary shall state in what manner, having regard to the assets and liabilities of the society, such policies may be converted into acturially sound policies in favour of the policy-holders or their nominees or dependants, fixing for such purpose the amount which may be credited to the account of each such policy-holder.

(*c*) The Registrar shall after due consideration of such report order that such policies shall be converted into actuarially sound policies as reported by the actuary or in any other equitable manner which the Registrar shall deem fit to determine.

(7) (*a*) Any order passed by the Registrar under sub-sections (5) and (6) shall as between the policy-holder and the society be binding and conclusive.

(*b*) The Registrar shall give notice of every such order to the society concerned and the society shall within two months from the date of receipt of such notice intimate to every policy-holder the order in so far as it relates to such policy-holder.

(*c*) A scheme ordered to be adopted under sub-section (5) or sub-section (6) shall from the date of such order be deemed to be a scheme for purposes of sub-sections 1 and 2 of this section.

Separation of accounts and funds.

84. Where a provident society effects policies of insurance in connection with more than one of the classes of contingency separately specified in Section 65 the receipts and payments in respect of each such class shall be recorded in a separate account in the cash book kept in accordance with Section 79.

85. (1) Every provident society shall, unless it already holds invested in approved securities not less than fifty per cent. of the total assets of the society invest all surplus assets in such securities until the total amount so invested amounts to not less than fifty per cent. of the total assets of the society, and shall thereafter keep invested in such securities not less than fifty per cent. of the total assets of the society.

Investment of funds.

(2) No funds or investment of a provident society except a deposit made under Section 78 shall be kept otherwise than in the name of the society or in the name of a public officer approved by Our Government.

(3) No loan shall be made out of the assets of a provident society to any director or officer of the society except on the security of a policy of insurance held in the society and within its surrender value and no such loan shall be made to any concern of which a director or officer of the society is a director or partner.

(4) Any director or officer of a society which contravenes the provisions of sub-section (3), who is knowingly a party to the contravention shall without prejudice to any other penalty which he may incur be jointly and severally liable to the society for the amount of the loan, and such amount, together with interest from the date of the loan at such rate not exceeding twelve per cent. per annum as the Registrar may fix, shall on application by the Registrar to any civil court of competent jurisdiction be recoverable by execution as if a decree for such amount has been passed by that court.

86. The books of every provident society shall at all reasonable times be open to inspection by the Registrar or any person appointed by him in this behalf or by any member or policy-holder of the society who has made an application in this behalf to the Registrar.

Inspection of books

87 (1) The Registrar shall at least once in two years and may, if he thinks fit, at any time visit personally or depute a suitable person to visit the principal office of a provident society and inquire into the solvency of the society and the manner in which the business of the society is conducted, or may, after giving notice to the society and giving it an opportunity to be heard, direct such an inquiry to be made by an auditor or actuary appointed by him.

Inquiry by or on behalf of Registrar

(2) For the purposes of any such inquiry the Registrar or the auditor or actuary, as the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanation as he may require on any matter relating to the affairs of the society.

(3) The results of any such inquiry shall be recorded in a report which shall be kept in the office of the Registrar and a copy of the report shall be sent to the society concerned and shall be open to inspection by any member or policy-holder of the society.

88. (1) The court may order the winding up of a provident society being a company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act of 1092, and the provisions of that Act shall subject to the provisions of this part, apply accordingly.

Winding up by Court and voluntary winding up.

(2) In addition to the grounds on which such an order may be based the Court may order the winding up of a provident society, if the registration of the society is cancelled by the Registrar under sub-section (4) of Section 70 and he applies for the winding up of the society.

(3 A provident society being a company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act of 1092, may be wound up volunterily under this Act if a resolution is passed by the proprietors that the society should be wound up except for the purpose of effecting an amalgamation or reconstruction of the society or on the ground that by reason of its liabilities it cannot continue its business

(4) A provident society not being a company incorporated under the Travancore Companies Act IX of 1114 or the Travancore Companies Act of 1092, may be wound up voluntarily under this Act if a resolution is passed by the proprietors that the society should be wound up voluntarily for the purpose or on the ground specified in sub-section (3) and the Registrar may in any case where he has ordered the cancellation of the registration of a society under sub section (4) of Section 70 order the winding up of the society under this Act.

Reduction of insurance contracts.

89. The Court may make an order reducing the amount of the insurance contracts of a provident society upon such terms and subject to such conditions as the Court thinks just—

(*a*) if the Registrar as an alternative to cancelling the registration of a society under sub-section (4) of Section 70 applies to the Court in this behalf;

(*b*) if while a society is in liquidation the Court thinks fit;

(*c*) if when a society has been proved to be insolvent the Court thinks fit to do so in place of making an order for the winding up of the society; or,

(*d*) if the Court is satisfied on an application made in this behalf by the society supported by the report of an actuaty, and after giving the policy-holders an opportunity to be heard that it is desirable to do so.

Appointment of liquidators.

90. (1) Where a provident society is to be wound up whether under the Travancore Companies Act IX of 1111 or under this Act the society shall, within seven days from the date of the order of the Court ordering the winding up or the passing of the resolution authorising the winding up as the case may be, give notice thereof to the Registrar and except where the winding up is done by an order of the Court the Registrar shall appoint the liquidator and shall determine the remuneration to be paid to him.

(2) Any liquidator so appointed may be removed by the Registrar if satisfied that the duties entrusted to him are not being properly discharged.

Powers of liquidator.

91. (1) A liquidator appointed to wind up a society shall have power:—

(*a*) to institute or defend any legal proceedings on behalf of the society by his name of office;

(*b*) to determine the contribution to be made by members of the society respectively to the assets of the society;

(c) to investigate all claims against the society and to decide questions of priority arising between claimants !

(d) to determine by what persons and in what proportion the cost of the liquidation are to be borne ;

(e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society ;

(f) to summon, and enforce the attendance of witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1100 ; and

(g) with the sanction of the Registrar to employ such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties.

(2) The liquidator shall, for settling the list of contributories and realising the amount of contributions have the same powers as an official liquidator appointed by the Court for the winding up of a company under the Travancore Companies Act IX of 1114.

Procedure at liquidation.

92. (1) As soon as a liquidator is appointed to wind up a society he shall take charge of all property movable or immovable of the society and of all its books and documents.

(2) If any proprietor or officer of the society or any other person retains any portion of the assets of the society or fails to deliver to the liquidator any book or document when so required by the liquidator, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and the Court may order the delivery of the assets or book or document to the liquidator.

(3) The liquidator shall within fifteen days of his appointment send notice by Post or Anchal to all persons who appear to him to be creditors of the society that a meeting of the creditors of the society will be held on a date not being less than twenty one or more than twenty-eight days after his appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in Our Government Gazette and once atleast in two newspapers circulating in the District in which the society is situated.

(4) At the meeting so held the creditors shall determine whether an application shall be made for the appointment of any person as liquidator in the place of or jointly with the liquidator already appointed, or for the appointment of a committee of inspection, and, if they so resolve and an application accordingly is made at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting, the Registrar shall appoint a suitable person in place of or jointly with the liquidator already appointed, and, if so desired, a committee of inspection.

(5) The committee of inspection shall subject to any prescribed conditions, have a general power of supervision over the acts of the liquidator and shall have the right to inspect his accounts at all reasonable times.

(6) The liquidator shall, with such assistance from an actuary as may be required to ascertain, as soon as practicable, the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society, and shall give

notice of the amount so found to each such person in the prescribed manner and each such person on receiving such notice shall be bound by the value so ascertained.

(7) The liquidator shall make a valuation of the assets of the society and an estimate of the costs of the winding up and shall on the basis of these settle the list of contributories.

(8) The liquidator shall apply to the Registrar for an order for the return of the deposit made by the society under Section 73 and the Registrar shall on such application order the return of the deposit subject to such terms and conditions, as he may think fit.

(9) In administering and distributing the assets of the society the liquidator shall have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Registrar.

(10) The liquidator shall keep books of account in which he shall record the proceedings at all meetings attended by him all amounts received or expended by him and any other matter that may be prescribed, and these books may, with the sanction of the Registrar, be inspected by any creditor or contributory.

(11) If the winding up continues for more than a year, the liquidator shall summon a meeting of the creditors and contributories at the end of the first year and of each succeeding year, and shall lay before them an account of his acts and dealings and of the conduct of the winding up, and that account, together with any views expressed thereon by the meeting shall be forwarded by the liquidator to the Registrar.

(12) So far as is not otherwise provided herein or is not otherwise prescribed under this Act the liquidator shall so far as practicable follow the procedure to be followed by an official liquidator appointed by the Court for the winding up of a company under the Travancore Companies Act IX of 1114.

Dissolution of provident society.

93. (1) As soon as the affairs of a provident society are fully wound up the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation thereof.

(2) Notice of the meeting shall be sent to each person individually and shall be advertised in Our Government Gazette and in at least two newspapers circulating in the District in which the society is situated.

(3) Within one week after the meeting, the liquidator shall send to the Registrar a copy of the account and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting.

(4) The Registrar may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirements and shall submit a further report to the Registrar within six months.

(5) If the Registrar is satisfied that the affairs of the society have been fully wound up, he shall register the account of the liquidator who shall forthwith make over to the Registrar sums, if any, remaining undisposed of; and on the expiry of three months from the registering of the account the Registrar shall declare the society dissolved and cause the dissolution of the society to be notified in Our Government Gazette and the liquidator shall thereupon be discharged from further responsibility.

(6) If within a period of five years from the date on which any sums have been made over to the Registrar under sub-section 5 of an order of a Court of competent jurisidiction has not been obtained at the instance of any claimant to such sums for their disposal, the said sums shall become the property of Our Government.

Nomination and assignment

94. (1) The provisions of Section 38 and Section 39 relating to assignment, transfer, and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (*a* of Section 65.

(2) No nomination shall be valid if the person nominated is not the husband, wife, father, mother, child, grand-child, brother, sister, nephew or niece of the holder of the policy.

PART IV.

Mutual Insurance Companies and Co-operative Life Insurance Societies.

Definitions.

95. (1) In this Part

(*a*) "Mutual Insurance Company" means an insurer, being a Company incorporated under the provisions of the Travancore Companies Act IX of 1114 or the Travancore Companies Act of 1092, which has no share capital and of which by its constitution all policy-holders and only policy-holders are members ; and

(*b*) "Co-operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members ;

Provided that any Co operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act.

(2) Notwithstanding anything contained in sub-section (1), other co-operative societies may be admitted as members of a Co-operative Life Insurance Socitey, without being eligible to any dividend, profit or bonus.

(3) (*a*) Subject to any rules made by Our Government, the Registrar of Co-operative Societies may register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co-operative Societies Act.

(*b*) Our Government may make rules to govern such societies, and the provisions of this Act in so far as they are inconsisteot with those rules, shall not apply to such societies.

Application of Act to Mutual Insurance Companies and co-operative Life Insurance Societies.

96. The provisions of Sections 6 and 7 and of sub-section (2) of Section 20 so far as those provisions are inconsistent with the provisions of this Part, shall not apply, and the provisions of this Part shall apply to Mutual Insurance Companies and Co operative Life Insurance Societies.

97. No Mutual Insurance Company incorporated after commencement of this Act and no Co-operative Life Insurance Society registered after that date under the Co-operative Societies Act shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of Section 98 of the Act and of the preliminary expenses, if any, incurred in the formation of the company or society.

Working capital of Mutual Insurance Companies and Co-operative Life Insurance Societies.

98. (1) Every Mutual Insurance Company and every Co-operative Life Insurance Society shall in respect of the life insurance business carried on by it in Travancore deposit and keep deposited with Our Accountant-General for and on behalf of Our Government, a sum of two hundred thousand rupees in cash or in approved securities estimated at the market value of the securities on the day of deposit.

Deposits to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies

(2) The deposit referred to in sub-section (1) may be made in instalments of which the first shall be a payment, made before or at the time the application for registration under this Act is made, of twenty five thousand rupees or such sum as with any deposit previously made by the insurer under the provisions of the Travancore Life Assurance Companies Act brings the amount deposited up to twenty-five thousand rupees, and the subsequent instalments shall be annual instalments made before the expiry of each subsequent year of an amount in cash or in approved securities estimated at the market value of the securities on the day of payment of the instalment, equal, to one third of the gross premium income received in the previous year.

99. No transferee or assignee of a policy by an insurer to whom this Part applies shall become a member of a Mutual Insurance Company or a Co-operative Life Insurance Society merely by reason of any such transfer or assignment.

Transferees and assignees of policies not to become members

100. Notwithstanding the provisions of Section 84 and Section 165 of the Travancore Companies Act IX of 1114 a Mutual Insurance Company or a Co operative Life Insurance Society may instead of sending the notices and the copies of the balance sheet, revenue account and other documents which they are required to send to the members under those section, publish such notices or documents in a newspaper or newspapers circulating in the place where the principal office of the company is situated.

Publication of notices and documents of Mutual Insurance Companies and Co-operative Life Insurance Societies.

101. Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, on the application of any member made within two years from the date on which any such document is furnished to the Registrar of Companies under the provisions of Section 170 of the Travancore Companies Act IX of 1114 or to the Registrar of Co-operative Societies furnished a copy of the document free of cost to the member within fourteen days of the application.

Supply of documents to members.

PART V.

Miscellaneous.

Penalty for default in complying with or act in contravention of this Act.

102. (1) Except as otherwise provided in this Act any insurer who makes default in complying with or acts in contravention of any requirement of this Act and where the insurer is a Company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm who is knowingly a party to the default, shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing default with an additional fine which may extend to five hundred rupees for every day during which the default continues.

(2) Any provident society which makes default in complying with any of the requirements of Part III and any director, managing agent manager, secretary or other officer of the society who is knowingly a party to the default, shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default with fine which may extend to two hundred and fifty rupees for every day during which the default continues.

Penalty for transacting insurance business in contravention of Sections 3, 6, 97 and 98.

103. (1) Any insurer or any person acting on behalf of an insurer, who transacts any class of insurance business in contravention of any of the provisions of Section 3, Section 6, Section 7, Section 97 or Section 98 or does any one or more of the acts constituting the business of insurance in relation to any insurance business transacted in contravention of any of the said sections shall be punishable with fine which may extend to two thousand rupees.

(2) Any person knowingly taking out a policy of insurance with any insurer or person guilty of an offence under sub-section (1) shall be punishable with fine which may extend to five hundred rupees;

Provided that nothing in this section shall apply to the business of reinsurance between the Head Office of an insurer in Travancore and the Head Office of an insurer not having an office in Travancore.

Penalty for false statement in documents.

104. Whoever, in any return, report, certificate balance sheet or other document required by or for the purposes of any of the provisions of this Act willfully makes a statement false in any material particular knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

Wrongfully obtaining or withholding property.

105. Any director, managing agent, manager or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or authorised by this Act shall, on the complaint of the insurer or any member or any policy-holder thereof, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied and in default to suffer imprisonment for a period not exceeding two years.

106. If on the application of an insurer or any member of an insurance company or any policy holder or the liquidator or of an insurance company (in the event of the insurer being in liquidation) the Court is satisfied that by reason of any contravention of the provisions of this Act the amount of the life insurance fund has been diminished, every person who was at the time of the contravention a director, manager, liquidator or an officer of the insurer shall be deemed in respect of the contravention to have been guilty of misfeasance in relation to the insurer unless he proves that the contravention occurred without his consent or connivance and was not facilitated by any neglect or omission on his part, and the Court shall have all the powers which a Court has under Sections 291 and 293 of the Travancore Companies Act IX of 1114, and shall also have the power to assess the sum by which the amount of the life insurance fund has been diminished by reason of the misfeasance and to order any person guilty thereof to contribute to that fund the whole or any part of that sum by way of compensation.

Wrongfully diminishing the insurance fund.

107. Except where proceedings are instituted by the Registrar no proceedings under this Regulation against an insurer or any director, manager or other officer of an insurer or any person who is liable under sub-section (2) of Section 41 shall be instituted by any person unless he has previous thereto obtained the sanction of Our Government to the institution of such proceedings.

Previous sanction of Government for institution of proceedings.

108. If in any proceedings, Civil or Criminal, it appears to the Court hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstance of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him either wholly or partly from his liability on such terms as it may think fit.

Power of Court to grant relief

109. No court inferior to that of a Magistrate of the First Class shall try any offence under this Act.

Cognisance of offences

110. (1) An appeal shall lie to the court having jurisdiction from any of the following orders, namely;—

Appeasl.

(a) an order under Section 3 refusing to register, or chncelling the registration of an insurer ;

(b) an order under Section 5 directing the insurer to change his name ;

(c) an order under Section 42 cancelling the licence issued to an agent ;

(d) an order under Section 75 refusing to register an amendment of rules ;

(e) an order under Section 87 directing an inquiry by an auditor or actuary ; or

(f) an order made in the course of the winding up or insolvency of an insurer or a provident society.

(2) The court having jurisdiction for the purposes of sub-section (1 shall be the District Court within whose local limits the principal place of business of the insurer concerned is situate.

(3) An appeal shall lie from any order made under sub-section (1) to the authority authorised to hear appeals from the decisions of the court making the same.

Service of notices.

111. (1) Any process or notice required to be served on an insurer or provident society shall be sufficiently served if addressed to any person registered with the Registrar as a person authorised to accept notices on behalf of the insurer or provident society and left at or sent by registered Post or Anchal to the address of such person as registered with the Registrar.

(2) Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed to be notice to the holder of such policy:

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer or to a provident society notice in writing of his interest, any notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.

Declaration of interim bonus.

112. Notwithstanding anything to the contrary contained in this Act an insurer carrying on the business of life insurance shall be at liberty to declare an interim bonus or bonuses to policy holders whose policies mature for payment by reason of death or otherwise during the inter-valuation period on the recommendation of the investigating actuary made at the last preceding valuation.

Acquisition of surrender values by policy.

113. (1) Where a definite number of premiums is payable a policy of life insurance on which all premiums have been paid for three consecutive years shall acquire a guaranteed surrender value and notwithstanding any contract to the contrary shall not lapse by reason of non-payment of further premium but shall notwithstanding such non-payment be kept alive to the extent of its paid up value.

Explanation.—For the purposes of this sub-section the paid up value of a policy shall be an amount bearing to the total sum assured by the policy the same proportion as the total of the premiums already paid on the policy bears to the total of the premiums payable under the policy.

(2) A policy kept alive to the extent of its paid up value under sub-section (1) shall not participate in any profits of the insurer earned after the conversion of the policy into a paid up policy.

(3) This section shall not apply to—

(*a*) policies in respect of which the sum assured is payable only on the happening of a contingency which may not arise, or

(*b*) where the paid up value will be less than one hundred rupees, or

(*c*) where the parties after the default has occurred in payment of the premiums agree in writing to some other arrangement, or

(*d*) to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non-payment of premium.

114. (1) Our Government may, subject to the condition of previous publication by notification in Our Government Gazette, make rules to carry out the purposes of this Act.

Power of Our Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may prescribe :—

(*a*) the qualifications to be possessed by actuaries;

(*b*) the manner in which it shall be determined for the purpose of this Act what is insurance business transacted in Travancore :

(*c*) the form referred to in clause (d) of sub-section (2) of Section 16:

(*d*) the manner in which the prospectuses and tables referred to in sub-section (1) of Section 41 shall be published and the form in which they shall be drawn up ;

(*e*) the matters to be prescribed for the purposes of Section 48;

(*f*) the manner in which licenses to act as insurance agents may be issued or cancelled :

(*g*) the contingencies other than those specified in clauses (a) to (f) of Section 65 on the happening of which money may be paid by provident societies ;

(*h*) the matters other than those specified in clauses (a) to (o) of sub-section (1) of Section 74 on which a provident society shall make rules;

(*i*) the form of any account, return or register required by Part III and the manner in which such account, return or register shall be verified ;

(*j*) the fees to be charged for matters transacted under the provisions of this Act and the manner in which they are to be collected ; and

(*k*) the conditions and the matters which may be prescribed under sub-sections (5), (6), (10) and (12) of Section 92.

(3) All rules made by Our Government under the provisions of Section 28 of the Travancore Provident Insurance Societies Act of 1108 and in force at the commencement of this Act shall so far as not inconsistent with the provisions of Part III continue in force and have effect as it duly made under this section until they are replaced by rules made under this section.

115. Our Government may on the application or with the consent of an insurer, not being a company, alter the forms contained in the Schedules as respects that insurer, for the purpose of adapting them to the circumstances of that insurer :

Alteration of forms.

Provided that nothing done under this section shall exempt the insurer from supplying all information required under this Act so far as it is possible for the insurer to do so.

116. Our Government may, by notification in Our Government Gazette, exempt any insurer constituted, incorporated or domiciled in another Indian State or in British India from the provisions of Section 7 or Section 98 relating to deposits or from the provisions of sub-section (2) of Section 27 relating to the keeping of assets either absolutely or subject to such conditions or modifications as may be specified in the notification.

Power to exempt from certain requirements.

117. Nothing in this Act shall affect the liability of an insurer being a company to comply with the provisions of the Travancore Companies Act IX of 1114 in matters not otherwise specifically provided for by this Act

Saving of provisions of the Travancore Companies Act, IX of 1114.

118. Nothing in this Act shall apply to any Trade Union registered under the Travancore Trade Unions Act or to any insurance business carried on by Our Government or to any fund which Our Government may by notification in Our Government Gazette exempt from the operation of this Act.

Exemption.

119. Every insurer registered under this Act shall deposit and keep deposited with the Registrar copies of all standard forms of policy contracts issued by him in Travancore.

Policy forms to be deposited with the Registrar.

120. The market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Act with Our Accountant-General shall be determined by him and his decision shall be final.

Determination of market value of securities deposited under this Act.

121. The Travancore Provident Insurance Societies Act of 1108 as amended by Act VIII of 1110 and the Travancore Life Assurance Companies Act are hereby repealed.

Repeals

THE FIRST SCHEDULE.

See Section II.

Acts and Forms for the preparation of Balance Sheet.

PART I—ACTS.

1. The balance-sheet required to be prepared in respect of every class of business carried on by an insurer, is in the form in which it is set out in Part II of this Schedule (Form A), appropriate to a case where the insurer maintains a separate fund in respect of life insurance business.

2. The balance-sheet of life insurance business shall be prepared as a separate document. The balance-sheet of any class of business may be prepared as a separate document instead of being incorporated by the addition of columns and headings in the general balance sheet, but the totals of each such separate balance-sheet (showing the total assets of the class of business, the balance at the credit of the life insurance fund or other separate fund or account, the amount of share-holders' undivided profits, and outstanding liabilities) must in any case be incorporated in the general balance sheet.

3. If any combined balance-sheet is for any purpose issued by an insurer, it shall be in accordance with the Form set out in this Schedule, and there shall not be included among the assets shown in any such combined balance-sheet any amount in respect of any holding in or advance to any insurer whose assets and liabilities have been incorporated therein. Every combined balance-sheet must show clearly on the face thereof that it is a combined balance-sheet and must set out fully the name of every insurer whose assets and liabilities have been incorporated therein: if the assets and liabilities of any person not being an insurer are included in a combined balance-sheet, the fact must be stated thereon.

4. Where any guarantee have been given by an insurer (otherwise than in the ordinary course of re-insurance business) in respect of the policies of any other insurer, the balance sheet of the insurer by whom the guarantee was given must show clearly the name of every insurer whose policies have been so guaranteed and the extent of the guarantee:

Provided that this Act shall not apply where a combined balance-sheet is issued incorporating the assets and liabilities of the insurer whose policies are guaranteed.

5. Where any part of the assets of an insurer is deposited in any place outside Travancore as security for the owners of policies issued in the place, that balance-sheet shall state that part of the assets has been so deposited and if any such part forms part of the life insurance fund, shall show the amount thereof and the place where it is deposited. Where any combined balance sheet is issued by an insurer for any purpose, the information required by this Act shall be shown in the aggregate in respect of all the insurers whose assets and liabilities have been incorporated in the balance-sheet.

6. There shall be appended to the balance-sheet a statement in form AA as set out in Part II of this Schedule showing the market value and the book value of the assets.

7. Every balance-sheet shall contain the following certificates, namely:—

(a) a certificate signed by the same persons as are required by this Act to sign the balance-sheet explaining how the values as shown in the balance-sheet of the Investments in stocks and shares have been arrived at, and how the market value thereof has been ascertained for the purpose of comparison with the values so shown;

(b) a certificate signed by the same persons as are required by this Act to sign the balance-sheet and signed also, so far as respects the value of any items shown in the balance-sheet under the heading of "Reversions and Life Interests", by an actuary, certifying that the values of all the assets have been reviewed as at the date of the balance sheet, and that in their belief the assets set forth in the balance-sheet are shown in the aggregate at amounts not exceeding their realisable or market value under the several headings "Loans", "Reversions and Life Interests", "Investments", "Agents' Balances and Outstanding Premiums", "Interest, Dividends and Rents outstanding", "Interest Dividends and Rents accruing but not due", "Amounts due from other Persons or Bodies carrying on Insurance Business", "Sundry Debtors", "Bills Receivable", "Cash" and the several items specified under "Other Accounts":

Provided that if the persons signing the certificate are unable to certify that the assets set forth in the balance-sheet are so shown as aforesaid, a full explanation of the basis upon which the values shown in the balance-sheet have been assessed shall be given in the certificate;

(c) a certificate signed by the same persons as are required by this Act to sign the balance-sheet and by the auditor certifying that no parts of the assets of the life insurance fund has been directly or indirectly applied in contravention of the provisions of this Act relating to the application and investment of life insurance funds; and

(d) certificates signed by the auditor (which shall be in addition to any other certificate or report which he is required by law to give with respect to the balance-sheet) certifying:—

(i) that he has verified the cash balances and the securities relating to the insurer's loans, reversions and life interests, and investments;

(ii) to what extent, if any, he has verified the investments and transactions relating to any trusts undertaken by the insurer as trustee; and

(iii) in the case of a combined balance-sheet, that he has audited the balance-sheet and accounts of every insurer whose assets and liabilities are incorporated therein, or that any such balance-sheet and accounts which have not been audited by him have been certified by independent auditors. The said certificate shall contain a reference to such reservations, if any, as may have been made by any auditor upon any report or certificate given by him with respect to the balance sheet and accounts of any insurer whose assets and liabilities are incorporated in the combined balance-sheet.

8. If the value shown in the balance-sheet in respect of "Holdings in Subsidiary Companies" or "House property" have been increased since the last previous balance-sheet, the certificate required by paragraph (b) of the last foregoing Act shall state the amount of every increase not solely due to the cost of subsequent additions or, as respects holdings in subsidiary companies, to increased profits, and shall contain an explanation of the reason therefor.

9. For the purposes of this Schedule the following expresssions have the meanings hereby respectively assigned to them, namely:—

(a) "combined balance-sheet" includes any combined statement made by an insurer of assets and liabilities in the form of a balance-sheet which includes the assets and liabilities of any other insurer; and

(b "market value" means as respects any asset the market value thereof as ascertained from published market quotations or, if there be no such value its fair value as between a willing buyer and a willing seller.

PART II.

FORM A.

Form of Balance-sheet,

Balance-sheet..................of.................. 193

	Life and Annuity Business (1)			Other Classes of Business. (2)			Total.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
Shareholders' Capital (each class to be stated separately)	...	...	...	...	...	...	...	...	...
Authorised :—shares of Rs. — each Rs.	...	...	...	...	...	...	...	...	...
Subscribed : Shares of Rs.——each Rs.	...	...	...	...	...	...	...	...	...
Called up :—shares of Rs. each Rs.	...	...	...	...	...	...	...	...	...
Less unpaid calls Rs.	...	...	...	...	...	...	...	...	...
Reserve of Contingency Accounts (a)	...	...	...	...	...	...	...	...	...
Investment Reserve Accounts	...	...	...	...	...	...	...	...	...
Profit and loss Appropriation Account Balance	...	...	...	...	...	...	...	...	...
Balances of Funds and accounts	...	...	...	...	...	...	...	...	...
Life Insurance Fund	...	...	...	...	...	...	...	...	...
Fire Insurance Business Account	...	...	...	...	...	...	...	...	...
Marine Insurance Business Account	...	...	...	...	...	...	...	...	...
Accident and Miscellaneous Insurance Business Account	...	...	...	...	...	...	...	...	...
Other Accounts, if any (to be specified)	...	...	...	...	...	...	...	...	...
Pension or Superannuation Accounts (b)	—	...	...	...	...	...	...	...	...
Debenture Stock per cent	...	...	...	...	...	...	...	...	...
Loans and Advances (c)	...	...	...	...	...	...	...	...	...
Bills payable (c)	...	...	...	...	...	...	...	...	...
Estimated liability in respect of outstanding claims whether due or intimated (d)	...	...	...	...	...	...	...	...	...
Annuities due and unpaid (d)	...	...	...	...	...	...	...	...	...
Outstanding Dividends	...	...	...	...	...	...	...	...	...

	Life and Annuity Business. (1)			Other Classes of Business. (2)			Total.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
Loans									
On Mortgages of property within Travancore	...	...	...	...	...	...	...	...	...
On Mortgages of property outside Travancore.	...	...	...	...	...	...	...	...	...
On Security of municipal and other public rates	...	...	...	...	...	...	...	...	...
On Stocks and Shares	...	...	...	...	...	...	...	...	...
On Insurer's policies within their surrender value	...	...	...	...	...	...	...	...	...
On personal security	...	...	...	...	...	...	...	...	...
To subsidiary Companies other than Reversionary (f)	...	...	...	...	...	...	...	...	...
Reversions and Life Interests.									
Reversions and Life Interests purchased	...	...	...	...	...	...	...	...	...
Loans on Reversions and Life Interests	...	...	...	...	...	...	...	...	...
Debentures and Debenture stocks of Subsidiary Reversionary companies (f)	...	...	...	...	...	...	...		...
Ordinary stocks and shares of Subsidiary Reversionary companies (f)	...	...	...	...	...	...	...		...
Loans to Subsidiary Reversionary companies (f)	...	...	...	...	...	...	...	...	...
Investments	...	...		...	...	...	...		...
Deposit with the Accountant-General (Securities to be specified)	...	...	...	...	...	...	...	...	...
Travancore Government Securities	...	...	...	...	...	...	...	...	...
Other approved securities (particular to be given(Holdings in subsidiary companies (f)	...	...	...	...	...	...	...	...	...
House property	...	...	...	...	...	...	...	...	...

Amounts due to other Persons or Bodies carrying on Insurance Business (c)	... ...	Freehold and Leasehold ground rents and rent charges	... ...
Sundry Creditors including outstanding and accruing expenses and taxes (c)	... ...	Agents' balances	... ...
Other sums owing by the insurer (particulars to be given) (c)	... ...	Outstanding Premiums (g)	... ...
Contingent Liabilities to be specified (e)	... ...	Interest, Dividends and Rents outstanding (d)	... ...
		Interest, Dividends and Rents, accruing but not due (d)	... ...
		Amounts due from other Persons or Bodies carrying on Insurance business (h)	... ...
		Sundry debtors (i)	... ...
		Bills receivable	... ...
		Cash	... ...
Rs.		At Bankers on Deposit Account	... ...
		At Bankers on Current Account and in hand	... ...
		At Call and Short Notice (j)	... ...
		Other Accounts to be specified (k)	... ...

*Assets and Liabilities, Shareholder's Capital and Reserves, not allocated to any class of business specified in column (1) must be shown in column (2).

NOTES.—(a) The Reserves or Contingency Accounts must be separately stated.

(b) If the insurer has not full and unrestricted control of the assets constituting the Pension or Superannuation accounts either those Accounts and the assets and liabilities relating thereto must be omitted from the balance sheet or the assets of which the insurer has not such control must be clearly indicated on the face of the balance-sheet.

(c) If the insurer has deposited security as cover in respect of any of these items, the amount and nature of the securities so deposited must be clearly indicated on the face of the balance-sheet.

(d) These items are or have been included in the corresponding items in the Revenue or Profit and Loss Account. Outstanding and accruing interest, devidends and rents must be shown after deduction of income-tax or the income-tax must be provided for amongst the liabilities on the other side of the balance-sheet.

(e) Such items as amount of liability in respect of bills discounted, uncalled capital of subsidiary companies, uncalled capital of other investments etc., must either be shown in their several categories under the heading "Contingent Liabilities" or the appropriate items on the assets side must be set out in such details as will clearly indicate the amount of the uncalled capital.

(f) As respects life and annuity business full particular's of holdings in and loans to subsidiary companies must be stated, giving the name of each company, the number and description of each class of shares held, the amounts paid up thereon, and the value at which the holdings in each company stand in the balance-sheet.

(g) Either this item must be shown net or the commission must be provided for amongst the liabilities on the other side of the balance-sheet.

(h) The aggregate amount owing by a subsidiary company or subsidiary companies is to be shown separately from all other assets and the aggregate amount owing to a subsidiary company or subsidiary companies is to be shown separately from all other liabilities.

(i) Amounts due from directors and officers must be shown separately

(j) No amounts must be entered under this heading unless fully secured. If not fully secured the amounts must be included under the heading "Sundry Debtors."

(k) Under this heading must be included such items as the following, which must be shown under separate headings suitably described. office furniture, goodwill, preliminary, formation and organisation expenses, development expenditure account, discount on debentures issued, other expenditure carried forward to be written off in future years, balance being loss on Profit and Loss Appropriation Accounts, etc. The amounts included in the balance-sheet must not be in excess of cost.

(l) Under the head "Other Accounts, if any, to be specified" on the left hand side, fines realised from the staff and their contribution towards the provident fund, if any, should be shown under separate sub-heads.

FORM AA.

Classified Summary of the Assets of the.................................. Company on......................19 .

Class of Asset.	Book value as per (a) below.	Market value as per (b) below.	Remarks as per (c) below.
	Rs.	Rs.	
(1) Securities of the Government of Travancore,			
(2) Other approved securities (particulars to be given.)			
(3) Loans on the Company's policies and within their surrender value			
(4) Loans on Mortgage of property.			
(5) Loans on personal security.			
(6) Other loans (particulars to be stated)			
(7) Land and House property.			
(8) Cash on Deposit in banks.			
(9) Cash in hand and on current account in banks.			
(10) Agents' balances and outstanding premiums.			
(11) Interest, dividends and rents either outstanding or accrued but not due.			
(12) Other assets to be specified.			

The statement shall show—

(a) The value for which credit is taken in the balance-sheet for each of the above-mentioned classes of assets.

(b) The market value of such of the abovementioned classes of assets as has been ascertained from published quotations after deduction of accrued interest included in market prices in those cases where accrued interest is included elsewhere in the balance-sheet.

(c) How the value of such of the abovementioned classes of assets as has not been ascertained from published quotations has been arrived at, and

(d) The rates of exchange at which the values of the assets other than in rupee currency have been converted into rupees.

The market values need not be shown separately where they are not less than the book values and a certificate to that effect is appended to the statement.

No amounts on account of any of the following items may be entered in the statement:—

Good will.

Preliminary, formation, organisation or development expenses.

Commission or discount on shares or debentures issued.

Commuted Commission.

Expenditure carried forward to be written off in future years.

THE SECOND SCHEDULE

(*See Section 11.*)

Regulations and Forms for the preparation of Profit and Loss Accounts

PART I—REGULATIONS.

1. The items on the income side of the Profit and Loss Account and Profit and Loss Appropriation Account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not.

2 Deductions from Interest, Dividends and Rents to be shown in respect of income-tax must include all amounts in respect of Travancore Income-tax whether or not it has been or is to be deducted at source or paid direct.

3. The Interest, Dividends and Rents, less income-tax thereon shown in the Revenue Accounts for any classes of business other than life insurance business, including annuity business may, if the insurer so desires, be included with the corresponding items in the Profit and Loss Account.

PART II—FORMS.

FORM B.

Form of Profit and Loss Account.

Profit and Loss Account of............for the year ended......19

	Rs.	A	P		Rs.	A.	P.
Travancore Taxes on the Insurer's Profits (not applicable to any particular Fund or Account.)				Interests, Dividends and Rents (not applicable to any particular Fund or Account) Rs.			
Expenses of Management (not applicable to any particular Fund or Account)				Less—Income Tax thereon Rs.			
Loss on Realisation of Investments (not charged to Reserves or any particular Fund or Account)				Profit on realisation of Investments (not credited to Reserves or any particular Fund or Account)			
Depreciation of investments (not charged to Reserves or any particular Fund or Account)				Appreciation of Investments (not credited to Reserves or any particular Fund or Account)			
Loss transferred from Revenue Accounts (details to be given)				Profit transferred from Revenue Accounts (details to be given)			
Other expenditure (to be specified)				Transfer Fees			
				Other Income (to be specified)			
Balance for the year (carried to Appropriation Account)				Balance being loss for the year carried to Appropriation Account			

* If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount must be shown separately.

FORM C

Form of Profit and Loss appropriation Account

Profit and Loss Appropriation Account of.........for the year ended...............19 .

	Rs.	A.	P.		Rs.	A.	P.
Balance being loss brought forward from last year				Balance brought forward from last year Rs.			
Balance being loss for the year brought from Profits and Loss Account (as in Form B)				Less—Dividends since paid in respect of last year to be specified and if "free of tax" to be so stated) Rs.			
Dividends paid during the year on Account of the current year (to be specified and if "free of tax" to be so stated)							
Transfers to any particular Funds or Accounts (details to be given)				Balance for the year brought from Profit and Loss Account (as in Form B)			
Balance at end of the year as shown in the Balance-sheet				Balance being loss at end of the year as shown in the Balance-sheet.			

NOTE :—This item may be shown on the other side of the Account if preferred.

THE THIRD SCHEDULE.

See Section 11.

Regulations and Forms for the preparation of Revenue Accounts.

PART I—REGULATIONS.

1. Form D is, as set out in Part II of this Schedule, appropriate for life insurance business, but a separate revenue account must be prepared for every class of business in respect of which the insurer is required to maintain a separate account.

2. Form E is, as set out in Part II of this Schedule, appropriate for marine insurance business.

Form F is, as set out in Part II of this schedule, appropriate for fire insurance business. A separate Revenue Account in the same form must be prepared for accident and miscellaneous insurance including employers liability insurance and motor vehicles insurance.

3. If any combined Revenue Account is for any purpose issued by an insurer it must be in accordance with the forms specified in this Schedule and must clearly show on the face thereof that it is a combined Revenue Account, and must set out fully the name of every insurer required to make separate returns under this Act whose Revenue and Expenditure have been included therein ; if the Revenue and Expenditure of any person not being an insurer are included in a combined Revenue Account, the fact must be stated thereon.

4. The items on the income side of the Revenue Account must relate to income whether actually received or not, and the items on the expenditure side must be relate to expenditure whether actually paid or not.

5. Re-insurance premiums whether on business ceded or accepted, are to be brought into account gross (*i. e.*, before deducting commissions) under the head of premiums.

6. As respects life insurance business, the following statements shall be furnished to the Registrar every year showing details provided for in a Form pertaining thereto :—

(*a*) A stat ment in Form DD as set forth in Part II of this Schedule.

(*b*) A statement in Form DDD as set forth in Part II of this Schedule.

(*c*) A statement in Form DDDD as set forth in Part II of this Schedule.

7. The following information shall be supplied in addition to the Revenue Account namely, the gross premium written in Travancore for life, fire, marine and accident and miscellaneous insurance business.

8. Any office premises which form part of the assets of life insurance fund must be treated as an interest earning investment, and accordingly, in the Revenue Account for life insurance business a fair rent for the premises must be included under the heading "Interest, Dividends and Rents," and in the Revenue Account for every class of business for which the premises are used proper charges for the use thereof must be included under the heading "Expenses of management."

9. Where an insurer carries on the business of life insurance in conjunction with any other class of insurance business the expenses of management charged to the Life Insurance Revenue Account must not include more than a reasonable proportion of the common expenses and in particular no such account must be charged with more than a fair sum for the use of any office premises having regard to the income from the various classes of business carried on and to the extent to which the premises are used for the purposes of each class of business.

10· Deductions from interest, Dividents and Rents in respect of income tax must include all income-tax charged on such income whether or not it has been or is to be deducted at source or paid direct ; the income tax to be shown as so deducted in the life insurance Revenue Account is Travancore and Foreign income-tax, but the income-tax to be shown as deducted in Revenue Accounts of any other classes of business is Travancore income-tax only.

Form D.

Form of Revenue Account Applicable to Life Insurance Business.

Revenue Account of for the year ended 19 . in respect of Business.

	Business within Travancore.	Business out of Travancore(a)	Total.		Business within Travancore	Business out of Travancore.	Total.
Claims under Policies (including provision for claims due or intimated) less Re-insurances ...	Rs.	Rs.	Rs.		Rs	Rs.	Rs.
By death ...				(3) Travelling expenses ...			
By maturity ...				(4) Director's fees ...			
Annuities, less Re-insurance ...				(5) Auditor's fees ...			
Surrenders (including surrenders of bonus less Re-insurance ...				(6) Law charges ...			
Bonuses in cash, less Re-insurances ...				(7) Advertisements ...			
Bonuses in reduction of Premiums, less Re-insurances ...				(8) Printing and Stationary ...			
Commission to insurance agent ...				(9) Other expenses of management (accounts to be specified) ...			
Less that on Re-insurances ...				(10) Other payments (accounts to be specified ...			
*Expenses of management—(b) ...				(11) Rents for offices belonging to and occupied by the insurer ...			
(1) Commission other than commission to insurance agents and allowances ...				(12) Rents of other officers occupied by the insurer ...			
(2) Salaries, etc, (other than to agents and those contained in item No. 1.) ...				Bad debts ...			
				Travancore and Foreign Taxes ..			
				Other expenditure (to be specified) ...			
				Profit transferred to Profit and loss account ...			

Balance of Fund at the end of the year as shown in the Balance sheet ...			Registration fees. ...		
Balance of Fund at the begining of the year ...			Other income to be specified ...		
Premiums, less Re-insurances ...					
(i) First year premium ...					
(ii) Renewal premiums ...					
(iii) Single premiums ...			Loss transferred to Profit and Loss Account ...		
Consideration for Annuities granted, less Re-insurances (c) ...					
Interests Dividents and Rents ...			Transferred from Appropriation Account ...		
Less—income tax thereon (d) ...					

NOTES :—(*a*) In the case of an insurer having his head office in Travancore, these columns apply only to business the premiums in respect of which are payable outside Travancore.

(*b*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately. Under this item the salary paid to the managing agent or managing director shall be shown separately, from the total amount paid as salaries to the remaining staff.

(*c*) All single premiums for annuities whether immediate or deferred, must be included under this heading.

(*d*) Travancore and Foreign income-tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recovered from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for Travancore and foreign taxes, other than those shown under this item.

(*e*) Under the head "Other Income" fines, if any, realised from the staff must be shown separately All the amounts received by the insurer directly or indirectly whether from his Head office or from any other sourse outside Travancore shall also be shown separately in the revenue account, except such sums as properly appertain to the capital account.

* In the case of an insurer having his principal place of business outside Travancore the expenses of management for business out of Travancore and total business need not be split up to the several sub-heads, if they are not so split up in his own country.

FORM DD.

Classified statement of life-insurance policies of the Company, for the year ending 19 .

	New life insurance business in respect of which a premium has been paid in the year.				Total life insurance business in force at end of the year.		
	Number of policies.	Sums insured and annuities per annum.	Single Premiums (including consideration for immediate and deferred annuities and all other premiums paid at the outset where no subsequent premium is payable.)	Yearly renewal premium income.	Number of policies.	Sums insured with bonuses and annuities per annum.	Premium income for which credit has been in the revenue account.
Ordinary policies.		Rs.	Rs.	Rs.		Rs.	Rs.
In Travancore ..							
Out of Travancore ...							
Total ...							
Annuity Contracts, etc.							
In Travancore ..							
Out of Travancore ..							
Total ...							
Group Insurance policies.							
In Travancore ...							
Out of Travancore ..							
Total ...							

The amount should be stated to the nearest Rupee and after deduction of Re-Insurances.

FORM DDD.

Additions to and deductions from policies of the Company for the year ending 19 .

	Ordinary life insurance policies insuring money to be paid on death or survivance.			Annuities.	
	No.	Sum assured.	Reversionary bonus additions	No.	Annuity per annum.
		Rs.	Rs.		Rs.
(1) Policies at beginning of year ...					
(2) New policies issued ...					
(3) Old policies revived ...					
(4) Old policies changed and increased ...					
(5) Bonus additions allotted.					
Total ...					
Discontinued during year.					
(6) By death ...					
(7) By survivance or the happening of the contigencies insured against other than death ...					
(8) By expiry of term under temporary insurance ...					
(9) By surrender of policy ...					
(10) By surrender of bonus ...					
(11) By forfeiture or lapse ...					
(12) By change and decrease.					
(13) By being not taken up ...					
Total discontinued ...					
Total existing at end of year ...					

A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted.

Insurers having their principal place of business in Travancore shall give the information required in the form separately for business transacted in Travancore and business transacted outside Travancore and the insurers having their principal place of business outside Travancore will furnish information regarding business transacted in Travancore only.

FORM DDDD.

Particulars of the policies forfeited or lapsed in the last year under review, less those revived and reinstated for full benefits, classified according to the year in which they were issued.

Year in which the policies were issued.	Number of policies forfeited or lapsed.	Sum insured under policies forfeited or lapsed.
		Rs.
Year ending 19 , being the year under review ...	...	...
Year ending 19 , being the year previous to that under review ...	...	...

And so on, the number of and sum insured under policies forfeited or lapsed in the last year under review being stated after classification according to each of the preceding years in which they were issued.

A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted.

Insurers having their principal place of business in Travancore shall give the information required in the form separately for business transacted in Travancore and business transacted outside Travancore and the insurers having their principal place of business outside Travancore will furnish information regarding business transacted in Travancore only.

FORM E.

Form of Revenue Account applicable to Marine Insurance Business.

Revenue Account of for the year ended. 19 ,
in respect of Marine Insurance Business.

	Current year.	Last preceding year.	Previous years.	Total.		Current year.	Last preceding year.	Previous years.	Total.
	Rs.	Rs.	Rs.	Rs.					
* Claims paid (less salvages and Re-insurances) (a) (c)					Balance of Marine Insurance Business Account at beginning of the year				
*Commission ...					Balances ...				
*Expenses of Management (b) ...					Additional Reserve (if any) ...				
Bad Debts ...									
United Kingdom, British Indian Dominion and Foreign Taxes. ...					*Premiums (less Returns, Reinsurances, Brokerages and Discount) (c)				
*Other expenditure (to be specified)					Interest, Dividends and Rents.........Rs.				
Profit transferred to Profit and Loss Account. ...					Less—Income-tax thereon ....Rs.				
Balance of Marine Insurance business Account at end of year as shown in the Balance sheet ...					*Other income (to be specified) (b)				
					Loss transferred to Profit and Loss Account.				
Balance ...									
Additional Reserve (if any)					Transferred from appropriation Account.				

Notes.

(a) This heading must include all expenses directly incurred in settling claims

(b) If any sum has been deducted from this item and entered on the assets side of the balance sheet the amount so deducted must be shown separately.

(c) Where the account is furnished under the provisions of Section 11 of the Insurance Act 11—, separate figures for claims paid to claimants in Travancore and claimants outside Travancore and for premiums derived from business effected in Travancore and effected outside Travancore must be given.

(d) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside Travancore shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

* Where the account is furnished under the provisions of clause (b) of sub-section (2) of Section 16 of the Insurance Act 11—, by an insurer to whom that section applies, separate figures for business within Travancore and business out of Travancore must be given against the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.

FORM F.

Form of Revenue Account Applicable to Fire Insurance Business and to Accident and Miscellaneous Insurance Business including Employer's Liability Insurance and Motor Vehicle Insurance Business.

Revenue Account of for the year ended 19 .
in respect of Business.

*Claims under Policies, less Re-insurances (a) (d)	Rs.	Balance of Account at beginning of the year.	Rs.
Paid during the year ..... Rs.		Reserve for Unexpired Risks Rs,	
Total estimated liability in respect of outstanding claims at end of the year whether due or intimated. ...		Additional Reserve, if any Rs.	
Total ...			
Less – Outstanding at end of previous year (b) Rs.		*Premium, less Re-insurances (d)	
		Interest, Dividends and Rents. Rs.	
*Commission ...		Less—Income-tax thereon Rs.	
Expenses of Management (c)			
*Bad Debts ...		*Other Income (to be specified) (e)	
Foreign Taxes ...			
*Other Expenditure (to be specified)		Loss transferred to Profit and Loss Account	
Profit transferred to Profit and Loss Account ...			
Balance of Account at the end of the year as in the Balance-sheet: Rs. ...		Transferred from Appropriation Account.	
Reserve for unexpired Risks, being—per cent. of premium income of year ... Rs.			
Additional Reserve (if any) ... Rs.			
Rs....		Rs...	

Notes.

(a) This heading must include all expenses directly incurred in getting claims.

(b) If in any year the claims actually paid and those still unpaid at the end of that year in respect of the previous year or years are in excess of the amount included in the previous year's Revenue Account as provision for outstanding claims, then the amount of such excess must be shown in the Revenue Account.

(c) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately,

(d) Where the account is furnished under the provisions of Section 11 of the Insurance Act 11—, separate figures for claims paid to claimants in Travancore and claimants outside Travancore, and for premiums derived from business effected in Travancore and effected outside Travancore must be given.

(e) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside Travancore shall also be shown separately in the revenue account except such sums as properly appertain to the capital account.

*Where the account is furnished under the provisions of clause (b) of sub-section (2) section 16 of the Insurance Act, 11—, by an insurer to whom that section applies, separate figures for business within Travancore and business out of Travancore must be given against the items marked with an asterisk. Against all other items the total amount for the business as a whole may be given.

THE FOURTH SCHEDULE.

SEE SECTION 13.

Regulation for preparation of Abstracts of Actuaries' Reports and Requirements applicable to such Abstracts.

PART I—REGULATION.

1. Abstracts and Statements must be so arranged that the numbers and letters of the paragraphs correspond with those of the Paragraphs of Part II of this Schedule.

2. In showing the proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums, in accordance with the requirements of paragraph 4 of Part II of this Schedule, no credit is to be taken for any adjustments made in order to secure that no policy is treated as an asset.

3. (1) The average rate of interest yielded in any year by the assets constituting a life insurance fund shall for the purposes of paragraph 5 of Part II of this Schedule, be calculated by dividing the interest of the year by the mean fund of the year; and for the purposes of any such calculation the interest of the year shall be taken to be the whole of the interest credited to the life insurance fund during the year after deduction of income-tax charged thereon (any refund of income tax in respect of expenses of management made during the year being taken into account), and the mean fund of the year shall be ascertained by adding a sum equal to one-half of the amount of the life insurance fund at the beginning of the year to a sum equal to one-half of that fund at the end of the year, and deducting from the aggregate of those two sums an amount equal to one half of the interest of the year.

(2) For the purposes of the calculation aforesaid either—

(*a*) all profits and income arising during the year from sums invested in reversions shall be included in the interest credited to the life insurance fund during the year; or

(*b*) such portion of the life insurance fund as is invested in the purchase of reversions, and the profits and income arising therefrom, shall be excluded from the calculation; but in that case a statement must be added to the information required under the said paragraph 5, showing in respect of the portion of the fund so excluded as aforesaid the average rate of annual profit and income for which credit has been taken during the five years last preceding the valuation date, and explaining the manner in which the said average rate has been calculated.

(3) The information given in accordance with the requirement of the said paragraph 5, shall show clearly by which of the methods hereinbefore in this regulation mentioned the sums invested in reversions and the profits and income arising therefrom have been dealt with.

(4) Every abstract prepared in accordance with the requirements of Part II of this Schedule shall be signed by an actuary and shall contain a certificate by him to the effect that he has satisfied himself as to the accuracy of the valuations made for the purposes thereof and of the valuation data.

Provided that in the case of an abstract prepared on behalf of an insurer if the actuary who signs the abstract is not a permanent officer of the insurer, the certificate as to the accuracy of the valuation data shall be given and signed by the principal officer of the insurer and the actuary shall include in the abstract a statement signed by him showing what precautions he has taken to ensure the accuracy of the data.

5. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them namely :—

"extra premium" means, a charge for any risk not provided for in the minimum contract premium;

"inter-valuation period" means, as respects any valuation, the period to the valuation date of that valuation from the valuation date of the last preceding valuation in connection with which an abstract was prepared under this Regulation or, in a case where no such valuation has been made in respect of the class of business in question, from the date on which the insurer began to carry on that class of business

"maturity date" means the fixed date on which any benefit will become payable either absolutely or contingently :

"net premiums" means, as, respects any valuation, the premiums taken credit for in the valuation;

"premium term" means the period during which premiums are payable ;

"valuation date" means, as respects any valuation, the date as at which the valuation is made.

PART II.

Requirements applicable to an Abstract in respect of Life Insurance Business.

The following tabular statements shall be annexed to every abstract prepared in accordance with the requirements of this Part of this Schedule, namely :—

(*a*) a Consolidated Revenue Account, in the Form G annexed to this Part of this Schedule, for the inter-valuation period (except that it shall not be necessary to prepare such an account in respect of any class of business so long as the insurer deposits annually with the Registrar an abstract in respect of that class of business) ; and

(*b*) a summary and Valuation in the Form H annexed to this Part of this Schedule of the policies included at the valuation date in the class of business to which the abstracts relates ; and

(*c*) a Valuation Balance-sheet in the Form I annexed to this Part of this Schedule ; and

(*d*) a statement in Form DDD as set forth in Part II of the Third Schedule of the addition to and deductions from the number of policies and the sums insured thereunder for each class of life insurance ; and

(*e*) a statement in Form DDDD as set forth in Part II of the Third Schedule of particulars of policies forfeited or lapsed under each class of life insurance ; and every such abstract shall show—

1. The valuation date ;

2. The general principles and full details of the methods adopted in the valuation of each of the various classes of insurances and annuities shown in the said Form H, including statements on the following points :—

(*a*) whether the principles were determined by the instruments constituting the company or by its acts or bye-laws or how otherwise ;

(*b*) the method by which the net premiums have been rrived at and how the ages at entry, premium terms and maturity dates have been treated for the purpose of the valuation ;

(*c*) the methods by which the valuation age, period fom the valuation date to the maturity date, and the future premium terms, have been treated for the purpose of the valuation ;

(*d*) the rate of bonus taken into account whereby the method of valuation definite provision is maid for the maintenance of a specific rate of bonus ;

(*e*) the metho l of allowing for—

(i) the incidence of the premium income, and

(ii) Premiums payable otherwise than annually ;

(*f*) the methods by which provision has been made for the following matters, viz.

(i) the immediate payment of claims,

(ii) future expenses and profits in the case of limited payment and paid-up policies,

(iii) the reserve in respect of lapsed policies, not included in the valuation, but under which a liability exists or may arise, and whether any reserves have been made for the matters aforesaid ;

(*g*) whether under the valuation method adopted any policy would be treated as an asset, and if so what steps, if any, have been taken to eliminate such asset ;

(*h*) a statement of the manner in which policies on under-average lives and policies subject to premiums which include a charge for climatic military or other extra risks have been dealt with ; and

(*i*) the rates of exchange at which liabilities in respect of policies issued in foreign currencies have been converted into rupees and what provisions has been made for possible increase of liability arising from future variations in the rates of exchange.

3. The table of mortality used, and the rate of interest assumed, in the valuation.

4. The proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums, separately specified in respect of insurances with immediate profits with deferred profits, with profits under discounted bonus system, and without profits.

5. The average rates of interest yielded by the assets, whether invested or uninvested, constituting the life insurance fund for each of the years covered by the valuation date.

6. The basis adopted in the distribution of profits as between the insurer and policy-holders, and whether such basis was determined by the instruments constituting the company, or by its Acts or by-laws, or how otherwise.

7. The general principles adopted in the distribution of profits among policy-holders including statements on the following points, namely—

(a) whether the principles were determined by the instruments constituting the company, or by its Acts or bye-laws, or how otherwise,

(b) the number of years' premiums to be paid, period to elapse and other conditions to be fulfilled before a bonus is allotted,

(c) whether the bonus is allotted in respect of each year's premium paid, or in respect of each completed calendar year or year of assurance or how otherwise ; and

(d) whether the bonus vests immediately on allocation, or, if not, the conditions of vesting.

8. (1) The total amount of profits arising during the inter-valuation period, including profits paid away and sums transferred to reserve funds or other accounts during that period, and the amount brought forward from the preceding valuation (to be stated separately) and the allocation of such profits.

(a) to interim bonus paid,

(b) among policy holders with immediate participation, giving the number of the policies which participated and the sums assured thereunder excluding bonuses ;

(c) among policy-holders with deferred participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses) ;

(d) among policy-holders in the discounted bonus class, giving the number of policies which participated and the sums assured thereunder excluding bonuses) ;

(e) to the insurer, or in the case of an insurance company, among share-holders or to share holders' accounts (any such sums passed through the accounts during the inter valuation period to be separately stated) ;

(f) to every reserve fund or other fund or account (any such sums passed through the accounts during the inter-valuation period to be separately stated) ; and

(g) as carried forward unappropriated.

(2) Specimens of bonuses allotted as at the valuation date to policies for one thousand rupees—

(a) for the whole term of life effected at the respective ages of 20, 30 and 40 ; and having been in force respectively for five years, ten years and upwards at intervals of ten years, and

(b) for endowment insurances effected at the respective ages of 20, 30 and 40, for endowment terms of fifteen, twenty and thirty years, and having been in force respectively for five years, ten years and upwards at intervals of ten years,

together with the amounts apportioned under the various manners in which the bonus is receivable.

9. A statement in Form J annexed to this Part of this Schedule of specimen policy reserve values held or required to be held according to the methods adopted in the valuation, and specimen minimum surrender values in respect of whole life insurance policies for Rs. 1,000 with premiums payable throughout life effected at the respective ages of 20, 30, 40 and 50, and

immediately on payment of the first, second, third, fourth, fifth, sixth, seventh, eigth, ninth, tenth, fifteenth and twentieth annual premium, with similar specimen policy reserve values and specimen surrender values in respect of whole life insurance policies subject to premiums payable for 20 years and of endowment insurance policies maturing at age 55.

10. A statement showing how the liability under any disability clause in a policy has been determined in the valuation with full information of the tables of sickness or accident used for the purpose.

FORM G.

Consolidated Revenue Account of.................for................year commencing and ending...............

	Business within Travancore.	Total.		Business within Travancore.	Total.
	Rs.			Rs.	
Claims under Policies (including provision for claims due or intimated) less Re-insurances.			Balance of Life Insurance Fund at the beginning of the period.		
By death.			Premiums, less Re-insurances.		
By maturity.					
Annuities, less Re-insurances.			Consideration for Annuities granted, less Re-insurances (b).		
Surrenders (including Surrenders of Bonuses), less Re-insurances.					
Bonuses in cash, less Re-insurances,			Interests, dividends and rents.		
Banuses in reduction of Premiums, less Re-insurances.					
Commission (less than on Re-insurances.)			Less income tax thereon (c)		
Expenses of management (a) Agents' and Canvassers' allowance.					
Salaries etc., (other than to Agents and Canvassers).					
Travelling expenses.					
Director's fees					
Auditor's fees					

FORM G.—(contd.)

	Business within Travancore.	Total.		Business within Travancore.	Total.
	Rs.			Rs.	
Medical fees.					
Law charges					
Advertising, Printing and Stationery.					
Other expenses of management (accounts to be specified.)			Registration fees.		
Other payments (accounts to be specified.					
Rents for offices belonging to and occupied by the company.					
Rents of other offices occupied by the company.			Other income (to be specified).		
Travancore and Foreign taxes bad debts.					
Other expenditure (to be specified).			Loss transferred to Profit and Loss Account.		
Profit transferred to Profit and Loss Account.					
Balance of Life Insurance Fund at the end of the period as shown in the balance-sheet.			Transferred from Appropriation Account.		

NOTES.

(a) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately.

(b) All single premiums for annuities, whether immediate or deferred, must be included under this heading.

(c) Travancore and Foreign income tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income tax recovered from the revenue authorities in respect of expenses of management. The separate heading on the other side of the account is for Travancore and Foreign taxes, other than those shown under this item.

(d) In the case of an insurer having his principal place of business outside Travancore expenses of management for the total business need not be split up in the several sub-heads, if they are not so split up in his own country.

FORM H.

Summary and valuation of the policies of..........at ias......19......

Description of Transactions.	Particulars of the Policies for valuation.					Valuation.			
	Number of policies.	Sums assured.	Bonuses.	Office yearly premiums.	Net yearly premiums.	Sums assured and Bonus.	Office yearly premiums.	Net yearly premiums.	Net Liabilities.
DIVISION I.—INSURANCES.									
Group A.									
With immediate participation in profits.									
For whole term of life office.									
Other classes (to be specified).									
Extra premiums									
Total Insurances.									
Deduct—Re-insurances.									
Net insurances.									
Group B.									
With deferred participation in profits.									
For whole term of life.									
Other classes (to be specified).									
Extra premiums.									
Total Insurance.									
Deduct—Re-insurances.									
Net insurances.									
Group C.									
Under discounted bonus systems.									
For whole term of life.									
Other classes (to be specified).									
Extra premiums.									
Total Insurances.									
Deduct- Re-insurances.									
Net insurances.									
Total insurances with profit.									
Group D.									
Without participation in profits.									
For whole term of life									
Other classes (to be specified)									
Extra premiums.									
Total insurances.									
Deduct—Re-insurances									
Net insurances									
Total insurances without profits.									
Total of the insurances shown in all groups.									

FORM H—(contd.)

Description of Transactions.	Particulars of the Policies for valuation					Valuation.			
	Number of policies.	Sums assured.	Bonuses.	Office yearly premiums.	Net yearly premiums.	Sums assured and bonus.	Office yearly premiums.	Net yearly premiums.	Net Liabilities.
Deduct—Re-insurances.									
Net amount of insurances.									
Adjustment, if any (to be separately specified.)									
DIVISION II—ANNUITIES ON LIVES.									
Immediate Annuties.									
Deferred Annuities with return of premiums.									
Deferred Annuities without return of premiums.									
Other classes (to be specified.)									
Total annuities.									
Deduct—Re-insurances.									
Net annuities on lives.									
Total of the results (after deduction of Re insurances)									

NOTES.

1. Item in this Summary are to be stated to the nearest rupee.
2. No policy of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group is to be included in Group A, B, C or D of this Form any such policies must be shown in a separate Group which must be added to the Form.
3. If policies without participation in profits but with a guaranteed rate of bonus are issued they must be separately specified in Group D of this Form.
4. Policies under which there is a waiver of premiums during disability must be shown as a separate class.
5. Separate forms must be prepared in respect of classes of policies valued by different tables of mortality or at different rates of interest or involving the valuation of net premiums on different bases.
6. In cases where separate valuation of any portion of the business are required under local laws in places outside Travancore and reserves based on such valuations are deposited in such places, a statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums, and the total net liability on the bases as to mortality and interest adopted in each such place with statement as to such bases respectively.
7. Office and net premiums and the values thereof must be shown after deduction of abatements made by the application of bonuses.

FORM I.

Valuation Balance-sheet of as at 19 .

Net liability under business as shown in the Summary and Valuation of policies.	Rs.	Balance of Life Insurance Fund as shown in the Balance sheet.	Rs.
Surplus, if any.		Deficiency, if any.	

NOTE.—If the proportion of surplus allocated to the insurer, or in the case of an insurance company to the share-holders is not uniform in respect of all classes of insurances, the surplus must be shown separately for the classes to which the different proportions relate.

FORM J.

Specimen policy reserve values and minimum surrender values under a policy for Rs 1,000.

Number of premiums paid.	Age at entry 20.		Age at entry 30.		Age at entry 40.		Age at entry 50.	
	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value	Reserve value.	Minimum surrender value.	Reserve value.	Minimum surrender value.
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
15								
20								

NOTE.—Items to this Form to be stated to the nearest rupee.

THE FIFTH SCHEDULE.

(See Section 13).

Regulations for preparing statements of business in force and requirements applicable to such statements.

PART I.—REGULATIONS.

1. Statements prepared under this Schedule must be prepared so far as practicable, in tabular form and must be identified by numbers and letters corresponding with those of the paragraphs of Part II of this Schedule.

2. Except with respect to rates of premium or contribution items in statements prepared under this Schedule are to be shown to the nearest rupee.

3. Extra premium shown in the forms of Summary and Valuation prepared under the Fourth Schedule to this Act must not be included in statements prepared under this Schedule

4. Every statement prepared under this Schedule shall be signed by the Actuary making the investigation in connection with which it is prepared.

5. For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them namely:—

(*a*) "Annual loading" means the provision made for future expenses and profits;

(*b*) "Extra premiums" means a charge for any risk not provided for in the minimum contract premium;

(*c*) "Net premiums" means the premiums taken credit for in the valuation in connection with which any statement is prepared; and

(*d*) "Valuation date" means, as respects any valuation, the date as at which the valuation is made.

PART II—REQUIREMENTS FOR STATEMENTS APPLICABLE TO LIFE INSURANCE BUSINESS.

The statements required to be prepared under this Part of this Schedule are as follows, namely:—

1. Statements, separately prepared in respect of policies with and without participation in profits showing—

(*a*) as respects policies for the whole term of life, the rates of office premiums charged, in accordance with the published tables in use, for new policies giving the rates of decennial ages at entry from 20 to 70 inclusive;

(*b*) as respects endowment insurance policies, the rates of office premiums charged, in accordance with the published tables in use, for new policies with original terms of ten, fifteen, twenty thirty, and forty years, giving the rates for decennial ages at entry from 20 to 40 inclusive, but excluding policies under which the age at maturity exceeds 60.

2. Statements, separately prepared in respect of policies with immediate profits, with deferred profits, with profits, under discounted bonus systems, and without profits, showing in quinquennial groups —

(a) as respects Policies for the whole term of life—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately) grouped according to ages attained;

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable throughout life, and of the corresponding net premiums, grouped according to ages attained; and

(iii) the amount per annum, after deducting abatements made by application of bonus, of office Premiums payable for a limited number of years, and, either, the corresponding net premium grouped in accordance with the grouping adopted for the purposes of the valuation, or the annual loading reserved for the remaining duration of the policies, grouped according to ages attained;

(b) as respects endowment insurance policies—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped in accordance with the grouping adopted for the purposes of the valuation; and

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable, and of the corresponding net premiums grouped in accordance with the grouping adopted for the purposes of the valuation.

Provided that:—

(a) as respects endowment insurance policies which will reach maturity in less than five years, the information required by sub-paragraph (b) (i) of this paragraph must be given for each year instead of in quinquennial groups; and

(b) where the office premiums payable under policies for the whole time of life for a limited number of years, or the office premiums payable under endowment insurance policies, or the corresponding net premiums, are grouped for the purposes of the valuation otherwise than according to the number of years payments remaining to be made, or where the sums assured under endowment insurance policies are grouped for the purposes of the valuation otherwise than according to the years in which the policies will mature for payment or in which they are assumed to mature if earlier than the true year, then, in any such case the valuation constants and an explanation of, the method by which they are calculated must be given for each group and in the case of the sums assured under endowment insurance policies a statement must also be given of the amount assured maturing for payment in each of the two years following the valuation date.

3. Statements as respects any policies in force under which premiums cease to be payable, whether permanently or temporarily during disability arising from sickness or accident, showing the total amount of the office premiums payable.

4. Statements as respects immediate annuities on single lives for the whole term of life, separately prepared in rest of annuities on male and female lives, showing in quinquennial age groups the total amount of such annuities.

5. Statements as respects deferred annuities separately prepared in respect of annuities on male and female lives, showing the specimen reserve values for annuities of one hundred rupees which will be produced on maturity on the basis of the valuation adopted at ages, in the case of male lives, 60 and 65 and in the case of female lives, 55 and 60 ; the said statements must show the specimen reserve values which will be produced under the table of annual premiums in use for new policies, and if under any other table of annual premiums in use for any other deferred annuity policies in force smaller reserve values will be produced, the like specimens of these must also be given.

6. Statements as respects any policies of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, showing the total claims paid since the date as at which the last statements were prepared under this Part of this Schedule or, where no such statements have been prepared, since the date on which the insurer began to carry on the class of business to which the statements relate, and the reserves for unexpired risks and outstanding claims.

THE SIXTH SCHEDULE.

(*See Section 55*).

Rule as to the valuation of the liabilities of an Insurer in Insolvency or Liquidation.

The liabilities of an insurer in respect of current contracts effected in the course of life insurance business including annuity business, shall be calculated by the method and upon the basis to be determined by an Actuary approved by the Court, and the Actuary so approved shall, in determining as aforesaid, take into account :—

(*a*) the purpose for which such valuation is to be made.

(*b*) the rate of interest and the rates of mortality and sickness to be used in valuation ; and

(*c*) any special directions which may be given by the Court. The liabilities of an insurer in respect of current policies other than life policies shall be such portion of the last premium paid, as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

Annexure IX

THE TRAVANCORE TELEPHONE BILL.

AN ACT TO MAKE PROVISIONS RELATING TO TELEPHONES IN TRAVANCORE.

As passed by the Sri Mulam Assembly.

PART I.

PRELIMINARY.

Preamble.

Whereas it is expedient to make provisions relating to telephones in Travancore; It is hereby enacted as follows:

Short title, extent and commencement.

1. (i) This Act may be called "The Travancore Telephone Act".

(ii) It extends to the whole of Travancore.

(iii) It shall come into force at once.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

Telephone.

(i) "Telephone" means an electric, galvanic or magnetic telephone and includes appliances and apparatus for transmitting or making or receiving telephonic or other communications by means of electricity, galvanism or magnetism, but does not include electric call bells or buzzers.

Message.

(ii) "Message" means any communication sent or received by telephone or given to a Telephone Officer to be sent by telephone or to be delivered.

Telephone line.

(iii) "Telephone line" means an aerial, underground, or underwater wire" wires or cable used for the purpose of telephone communication with or without any casing, coating, tube or pipe enclosing the same, erected above ground or laid under ground or under water and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same.

Post.

(iv) "Post" means a post, pole, standard, stay, strut or other aboveground contrivance for carrying, suspending or supporting a telephone line

Telephone Authority.

(v) "Telephone Authority' means the Electrical Chief Engineer and includes any officer appointed in this behalf by name or by virtue of his office by Our Government to perform all or any of the functions of the Telephone authority under this Act.

Telephone Officer.

(vi) "Telephone Officer" means any person employed either permanently or temporarily in connection with a telephone established, maintained or worked by Our Government or by a person licensed under this Act.

Local Authority.

(vii) "Local Authority" means any Municipal Council or other authority legally entitled to or entrusted by Our Government with the control or management of any Municipal or Local Fund.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

3. Within Travancore, Our Government shall have the exclusive privilege of establishing, maintaining and working telephones.

Exclusive privilege of Government in respect of telephones.

Provided that Our Government may at their discretion grant a license, on such conditions and in consideration of such payments as they think fit, to any person to establish, maintain or work a telephone within any part of Travancore:

Power to grant licenses.

Provided also that nothing in this section shall affect the establishment, maintenance or working of any telephone by the British Government under such arrangement as has been or may from time to time be made by Our Government.

British Government telephonic system not affected

4. (i) On the occurrence of any public emergency or in the interests of public safety, Our Government or any officer specially authorised by Our Government in this behalf, may—

Power for Government to take possession of licensed telephones and to order interception of messages.

(a) take temporary possession of any telephone established, maintained or worked by any person licensed under this Act, or

(b) order that any message or class of messages to or from any person or class of person or relating to any particular subject brought for transmission by or transmitted or received by any telephone established, maintained or worked under this Act by Our Government or any person licensed shall not be transmitted or shall be intercepted or detained or shall be disclosed to Our Government or an officer thereof mentioned in the order.

(ii) if any doubt arises as to the existence of a public emergency or whether any act done under sub-section (i) was in the interests of public safety a certificate signed by the Chief Secretary to Our Government shall be conclusive proof on the point,

5. Our Government may from time to time by notification in the Government Gazette make rules consistent with this Act for the conduct of all or any telephones established, maintained or worked by Our Government or by persons licensed under this Act.

Power to make rules

(ii) Rules made under this section may provide for all or any of the following among other matters, that is to say,

(a) the rates at which and other conditions and restrictions subject to which messages shall be transmitted,

(b) the precautions to be taken for preventing the improper interception or disclosure pf messages,

(c) the period for which and the conditions subject to which messages and other documents belonging to, or being in the custody of Telephone Offices shall be preserved, and

(d) the fees to be charged for searching for messages or other documents in the custody of any Telephone Officer.

(iii) When making rules for the conduct of any telephone established, maintained or worked or to be establisded, maintained or worked by any person licensed under this Act Our Government may by the rules prescribe fines for any breach of the same;

Provided that the fine so prescribed shall not exceed the following limits, namely,

(i) when the person licensed under this Act is punishable for the breach one thousand Rupees and in the case of a continuing breach, a further fine of two hundred Rupees for every day after the first during the whole or any part of which the breach continues;

(ii) when a servant of the person so licensed or any other person is punishable for the breach, one-fourth of the amounts specified in Clause (i)

Revocation of licenses.

6. Our Government may at any time revoke any license granted under Section 4 on the breach of any of the conditions therein contained or in default of any payment of any consideration payable thereunder.

Government not responsible for loss or damage.

7. Our Government shall not be responsible for any loss or damage which may occur in consequence of any Telephone Officer failing in his duty with respect to the receipt, transmission or delivery of any message and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

PART III.

POWER TO PLACE TELEPHONE LINES AND POSTS.

Power for Telephone Authority to place and maintain telephone lines and posts.

8. The Telephone Authority may, from time to time, place and maintain a telephone line under, over, along or across, and posts in or upon, any immovable property.

Provided that —

(a) the Telephone Authority shall not exercise the powers conferred by this section except for the purposes of a telephone established or maintained by Our Government or to be so established or maintained ;

(b) Our Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the Telephone Authrity places any telephone line or post ; and

(c) except as hereinafter provided, the Telephone authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority without the permission of that Authority ; and

(d) in the exercise of the Powers conferred by this section, the Telephone Authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than that of Our Government or that referred to in clause (c) shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Power to enter on property to repair or remove telephone lines or posts.

9. The Telephone Authority may at any time for the purpose of examining, repairing, altering or removing any telephone line or post, enter on the property under, over, along, across in or upon which the line or post has been placed.

Provisions applicable to property vested in or under the control or management of Local Authorities.

Power of Local Authority to give permission under section 8, clause (c) subject to conditions.

10. Any permission given by a Local Authority under Section 8, Clause (c) may be given subject to such reasonable conditions as that Authority thinks fit to impose as to the payment of any expenses to which the Authority will necessarily be put in consequence of the exercise of the powers conferred by that section or as to the time or mode of execution of any work or as to any other thing connected with or relative to any work undertaken by the Telephone Authority under those powers,

11. When under the foregoing provisions of this Act, a telephone line or post has been placed by the Telephone Authority under, over, along, across, in or upon any property vested in or under the control or management of a Local Authority and the Local Authority, having regard to circumstances which have arisen since the telephone line or post, was so placed, considers it expedient that it should be removed or that its position should be altered, the Local Authority may require the Telephone Authority to remove it or alter its position, as the case may be.

Power for Local Authority to require removal or alteration of telephone lines or posts.

12. The Telephone Authority may for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or management of a Local Authority, alter the position thereunder of any pipe (not being a main pipe) for the supply of gas or water or of any drain (not being a main drain.)

Power to alter position of gas or water pipes or drains.

Provided that:—

(a) when the Telephone Authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so specifying the time at which it shall begin to do so to the Local Authority and when the pipe or drain is not under the control of the Local Authority, to the person under whose control the pipe or drain is ;

(b) A Local Authority or person receiving notice under clause (a) may send a person to superintend the work and the Telephone authrity shall execute the work to the reasonable satisfaction of the person so sent.

13. If any dispute arise between the Telephone Authority and a Local Authority in consequence of the Local Authority refusing the permission referred to in Section 8, Clause (e) or prescribing any condition under Section 10 or in consequence of the Telephone Authority omitting to comply with the requisition made under Section II or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by Our Government.

Disputes between Telephone Authority and Local Authority.

Provision applicable to property other than that of Our Government.

14. (i) If the exercise of the powers mentioned in Section 8 in respect of the property referred to in Clause (d) of that section is resisted or obstructed, the District Magistrate within whose jurisdiction the property is situate may in his discretion order that the Telephone Authority shall be permitted to exercise them.

Exercise of powers conferred by Sections 8 and disputes as to compensation in case of property other than that of Government.

(ii) If after the making of an order under sub section (i) any person resists the exercise of those powers, or having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under Section 181 of the Travancore Penal Code.

(iii) If any dispute arises as to the sufficiency of the compensation to be paid under Section 8, Clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge in whose jurisdiction the property is situate, be determined by him.

(iv) if any dispute arises as to the persons entitled to receive the compensation or as to the proportions in which the persons interested are entitled to share in it, Telephone Authority may pay into the Court of the District Judge, such amount as he deems sufficient or where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (iii) that amount: and the District Judge after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(v) The determination of a dispute by a District Judge under sub section (iii) or sub-section IV shall be final,

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the Telephone Authority from the person who has received the same

Removal or alteration of telephone line or post on property other than that of Our Government.

15. (1) When under the foregoing provisions of this Act, a telephone line or post has been placed by the Telephone Authority under, over, along, across, in or upon any property, not being property vested in or under the control or the management of a Local Authority and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telephone line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the Telephone authority to remove or alter the line or post accordingly.

Provided that if compensation has been paid under Section 8, clause (d), he shall when making the requisition, tender to the Telephone Authority the amount requisite to defray the expenses for removal or alteration or one half of the amount paid as compensation whichever may be the smaller sum.

(ii) If the Telephone Authority omits to comply with the requisition the person making it may apply to the District Magistrate within whose jurisdiction the property is situate, to order the removal or alteration.

(iii) A District Magistrate receiving an application under sub-section (ii) may in his discretion reject the same or make an order absolutely or subject to conditions for the removal of the telephone line or post to any other part of the property or to a higher or lower level or for the alteration of its form, and the order so made shall be final.

Provisions Applicable to all properties.

Removal of trees interrupting telephonic communications.

16. If any tree standing or lying near a telephone line interrupts, or is likely to interrupt telephonic communications, a Magistrate of the First or Second Class may, on the application of the Telephone Authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(ii) When disposing of an application under sub-section (i) the Magistrate shall, in the case of any tree in existence before the telephone line was placed, award to the persons interested in the tree such compensation as he thinks reasonable and the award shall be final.

17. (*i*) Any person desiring to deal with the legal exercise of a right in any property in such a manner as will cause or is likely to cause damage to a telephone line or post which has been duly placed in accordance with the provisions of this Act or to interrupt or interfere with telephonic communication, shall give not less than one month's notice in writing to the Telephone Authority of the intended exercise of such right.

Person exercising legal right likely to damage telephone line or post to give notice.

(*ii*) If any person without having complied with the provisions of sub-section (i) deals with any such property in such a manner as is likely to cause damage to a telephone line or post or to interrupt or interfere with telephonic communications a Magistrate of the First or Second Class may, on the application of the Telephone Authority direct such person to abstain from dealing with such property in such manner for a period not exceeding one month from the date of his order and forthwith to take such action, with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

18. Every telephone line or post placed before the passing of this Act under, over, along, across, in or upon any property for the purposes of a telephone established or maintained by Our Government, shall be deemed to have been placed in exercise of the powers conferred by, and after the observance of all the requirements of this Act.

Telephone lines and posts placed before the passing of this Act.

PART IV.

Penalties.

19. If any person establishes,, maintains or works a telephone within Travancore otherwise than as permitted by a license granted under Section 3, he shall be punished with fine which may extend to one thousand rupees and with a further fine which may extend to five hundred rupees for every week or part thereof during which the line is maintained or worked :

Establishing maintaining or working telephone against the provisions of S. 3.

Provided that in the case of telephone established, maintained or worked before this Act comes into force, no person shall be deemed to have committed any offence until the expiry of six months after the publication in our Government Gazettee of rules framed under Section 5.

20. If the holder of the license granted under Section 3 contravenes any condition contained in his license, he shall be punished with fine which may extend to one thousand rupees and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues.

Breach of condition of license

21. If any person, knowing or having reason to believe that a telephone has been established or is maintained or worked in contravention of this Act transmits or receives any message by such telephone or performs any service incidental thereto or delivers any message for transmission by such telephone or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

Using unauthorised telephones.

22. If any person.

(a) without permission of competent authority enters the exchang room of a telephone office of Our Government or of a person licensed under this Act, or

Intrusion into exchange room, trespass in telephone office or obstruction.

(b) enters a fenced enclosure round such a telephone office in contravention of any rule or notice not to do so, or

(c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or

(d) wilfully obstructs or impedes any such officer or servant in the performance of his duty.

he shall be punished with fine which may extend to five hundred rupees.

Unlawfully attempting to learn contents of message.

23. If any person does any of the acts mentioned in Section 22 with the intention of unlawfully learning the contents of any message or of committing any offence punishable under this Act, he may, in addition to the fine with which he is punishable under Section 22 be punished with imprisonment for a term which may may extend to one year.

24. If any person intending.

Intentionally damaging or tampering with telephone.

(a) to prevant or obstruct the transmission or delivery of any message, or

(b) to intercept or to acquaint himself with the contents of any message, or

(c) to commit mischief, damages, removes, tampers with or touches, any battery, machinery, telephone line, post or other thing whatever being part of or used in or about any telephone or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Injury or interference with a telephone line or post.

25. If any case not provided for by Section 24, any person deals with any property and thereby wilfully or negligently damages any telephone line or post duly placed on such property in accordance with the provisions of this Act, he shall be liable to pay the Telephone Authority such expenses, if any, as may be incurred in making good such damage and shall also, if the telephone communication is thereby interrupted be punishable with fine which may extend to one thousand rupees:

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has given the notice required by Section 17 (1)

26. If any Telephone Officer or any person not being a Telephone officer but having official duties connected with any Office which is used as a Telephone Office.

Telephone officer or other official making away with or altering or unlawfully intercepting or disclosing messages or divulging purport of messages.

(a) wilfully secretes, makes away with or any message which he has altered received for transmission or delivery, or

(b) wilfully and otherwise than in obedience of an order of Our Government or an officer specially authorised by Our Government to make the order, omits to transmit or intercepts or detains any message or any part thereof or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message to any person not entitled to recieve the same, or

(c) divulges the purport of any telephone message to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years or with fine or with both,

27, If any Telephone Officer transmits by telephone any message on which the charge prescribed by Our Government, or by a person licensed under the Act, as the case may be, has not been paid, intending thereby to defraud Our Government or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Telephone Officer fradulently sending messages with out payment

28. If any person transmits or causes to be transmitted by telephone a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Sending fabricated messages.

29. If any person fraudulently retains or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person or being required by a Telephone Officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Retaining a message delivered by mistake.

30, A Telephone Officer shall be deemed a public servant within the meaning of Sections 153, 154, 155, 156, and 157 of the Travancore Penal Code and, in the definition of "legal remuneration" contained in the said Section 153, the word " Government " shall, for the purposes of this Act be deemed to include a person licensed under this Act.

Brribery.

31. Whoever attempts to commit, or abets the commission of any offence punishable under this Act, shall be punished with the punishment herein provided for the offence.

Attempt to commit and abetment of offences.

Annexure. X.

THE TRAVANCORE NEGOTIABLE INSTRUMENTS ACT (AMENDMENT) BILL.

(A BILL TO AMEND THE TRAVANCORE NEGOTIABLE INSTRUMENTS ACT.)

(*As passed by the Sri Mulam Assembly.*)

Preamble

Whereas it is expedient to amend the Travancore Negotiable Instruments Act (Act II of 1075) for certain purposes; It is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the Travancore Negotiable Instruments Amendment Act.

(ii) It shall come into force at once.

Amendment of Section 8, Act II of 1075.

2. In Section 8 of the Travancore Negotiable Instruments Act II of 1075 (hereinafter referred to as the said Act), for the words "payable to or to the order of a payee" the words "payable to order" shall be substituted.

Amendment of Section 12, Act II of 1075.

3. For Section 12 of the said Act the following section shall be substituted, namely ;—

Negotiable Instrument.

"12. (1) "A Negotiable Instrument" means a promissory note bill of exchange or cheque payable either to order or to bearer,

Explanation 1. A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable,

Explanation II A promissory note bill of exchange or cheque is payable to bearer which is expressed to be so payble or on which the only or last indorsement is an indorsement in blank.

Explanation III. Where a promissory note, bill of exchange or cheque, either originally or by indorsement is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two or one or some of several payees"

Amendment of Section 15, Act II of 1075.

4 Section 15 of the said Act shall be re-numbered as sub-section (1) of Section 15 and to the said section so re-numbered the following sub-section shall be added, namely :—

"(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee,"

5. In section 50 of the said Act, for the words "payable to the order of a specified person or to a specified person or order" the words "payable to order" shall be substituted.

Amendment of Section 50, Act II of 1075

6. In Sections 65 and 85 of the said Act, for the words "twenty-four", the words "forty-eight" shall be substituted.

Amendment of Sections 65 and 85 Act II of 1075.

7. After Section 77 of the said Act, the following section shall be added, namely—

Insertion of a new Section 77-A Act II of 1075.

"77—A. Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate presentment must be made within a reasonable time."

Excuse for delay in presentment for acceptance or payment.

8. In Section 82 of the said Act after the word "shall", the words "notwithstanding any agreement relating to interest between any parties to the instrument" shall be inserted.

Amendment of Section 82, Act II of 1075.

9. Section 87 of the said act shall be re-numbered as sub-section (1) of Section 87 and to the said section so re-numbered, the following sub-section shall be added, namely :—

Amendment of Section 87, Act II of 1075.

"(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation."

10. After Section 87 of the said Act, the following section shall be added, namely :—

Insertion of a new Section 87 A.

87—A. Where any draft that is an order to pay money drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be indorsed by or on behalf of the payee, the bank is discharged by payment in due course."

Drafts drawn by one branch of a bank on another payable to order.

11. In Section 124 of the said Act, for the words "payable to or to the order of a specified person," the words "payable to order" shall be substituted.

Amendment of Section 124, Act II of 1075.

12. To Section 134 of the said Act, the following explanation shall be added, namely :—

Amendment of Section 134, Act II of 1075.

"*Explanation.*—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof."

Annexure XI.

THE TRAVANCORE EQUITABLE MORTGAGE BILL.

(As approved by the Select Committee.)

Preamble.

Where as it is expedient to provide for the hypothecation of immovable property by deposit of title-deeds thereof: It is hereby enacted as follows ;—

Short title, extent and commencement.

1. (a) This Act may be called "The Travancore equitable Mortgage Act"

(b) It extends to the municipal areas within the municipalities of Alleppey, Kottayam, Nagercoil, Parur, Quilon and Trivandrum, and to other Municipal areas or places to which it may be extended by notification published by Our Government in that behalf in Our Government Gazette.

(c) It shall come into force on such date as Our Government may notify in that behalf in Our Government Gazette.

Hypothecation of immovable property by deposit of title deed.

2. (1) Any person may, in any of the municipal areas of Alleppey, Kottayam, Nagercoil, Parur, Quilon and Trivandrum and in any other municipal area or place which Our Government may by notification in Our Government Gazette specify in this behalf, create an equitable mortgage on his immovable property by delivering for such purpose to his creditor or the agent of such creditor documents of title to the immovable property.

(2) Notwithstanding anything to the contrary contained in any law or custom, the rights and liabilities arising from such transaction shall be enforceable in the same manner as those arising under a duly executed deed of hypothecation of the immovable property, containing a personal covenant to pay.

Annexure I.

THE TRAVANCORE HINDU INHERITANCE (REMOVAL OF DISABILITIES) BILL.

As passed by the Sri Chitra State Council.

Whereas it is necessary to amend the Hindu Law of Inheritance as administered in Travancore relating to exclusion from inheritance of certain class of heirs and to remove certain doubts; It is hereby enacted as follows:—

1. This Regulation may be called the Travancore Hindu Inheritance (Removal of Disabilities) Regulation,—1113.

2. It extends to the whole of Travancore.

3. It shall come into force at once.

4. Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by Hindu Law shall be excluded from inheritance, or from any right or share in joint family property by reason only of a disease, deformity or physical or mental defect.

5. Nothing contained in this Regulation shall affect any right which has accrued or any liability which has been incurred before the commencement of this Regulation or shall be deemed to confer upon any person any right in respect of any religious office or service or of the management of any religious or charitable trust which he would not have had if this Regulation had not been passed

Annexure II.

THE TRAVANCORE CHITTIES ACT AMENDMENT BILL.

A Bill to amend the Travancore Chitties Act III of 1094 as amended by Act VI of 1108.

Preamble.

Whereas it is expedient to amend the Travancore Chitties Act III of 1094 as amended by Act VI of 1108, for a certain purpose, it is hereby enacted as follows:—

Short title and commencement.

1. (i) This Act may be called the Travancore Chitties (Amendment) Act of 111 .

(ii) It shall come into force at once

2. Add the following as Section 27 A, after Section 27:—

Relief from payment in lump.

"27 A. Notwithstanding anything contained in Sections 26 and 27 or in any contract, law or rulings of Court, in the case of chitties defaulted by prized subscribers since 1-1-1105 and not terminated on the date of suit no Court shall decree for a period of five years from the date of the passing of this Amendment Act anything more than the defaulted subscriptions with interest at six per cent per annum, such interest not exceeding half the subscriptions due for each instalment."

STATEMENT OF OBJECTS AND REASONS.

Chitties form the bulk of the debts of the people of this land. With the fall in the price of agricultural produces, it has become impossible for many a chitty subscriber to pay the instalments regularly. Once the prized subscriber defaults, he is according to the usual terms of our chitty security bonds bound to pay the whole of the future subscriptions in a lump with interest from the date of default or from the date of demand in writing. This is, no doubt, a very heavy penalty imposed on the prized subscribers. It seems unconscionable to demand from a defaulted subscriber the entire future subscriptions in a lump with interest as stated above, although the chitty will be terminating only after some years. The Travancore Agriculturirts' Relief Act and the Amendment Bills now before the Legislature do not seem to provide any measure of relief in this matter. This amendment will be a real source of relief to the vast majority of the debtors of our land. While it relieves the debtors it does not place the creditor in any disadvantage. The chitty foreman will be getting what the subscribers are really bound to pay namely, the defaulted subscriptions with interest from the dates of each default. The claim for payment of the future subscriptions in a lump with interest, although in accordance with the terms of the security bonds, is not what is reasonably due and can be claimed under ordinary circumstances but for the terms of the security bond. This amendment is solely a measure of relief as can be seen from the periods of its operation mentioned in it.

Trivandrum,
25th March 1939.

E. P. VARGHESE,
Member Sri Mulam Assembly.

[library stamp]

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TO

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